101ST CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 101-485
Part 4

AMERICANS WITH DISABILITIES ACT OF 1990

MAY 15, 1990.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2273 which on May 9, 1989, was referred jointly to the Committee on Education and Labor, the Committee on Energy and Commerce, the Committee on Public Works and Transportation, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the powers to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SEC. 4. DEFENSES.

(a) IN GENERAL.—It shall be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, selection criteria, performance standards, or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the ability of an individual to perform or participate, or take advantage of the essential components of such particular service, program, activity, job, or other opportunity and such performance, participation, or taking advantage of such essential components cannot be accomplished by applicable reasonable accommodations, modifications, or the provision of auxiliary aids or services.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include—

(1) requiring that the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; and

(2) requiring that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) EMPLOYEE.—

(A) IN GENERAL.—The term "employee" means an individual employed by an employer.

(B) EXCEPTION.—The term "employee" shall not include any individual elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any individual chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

(C) LIMITATION ON EXCEPTION.—The exception contained in subparagraph (B) shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.

(3) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(4) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(5) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No employer, employment agency, labor organization, or joint labor-management committee shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application

procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discrimination" includes—

(1) the failure by an employer, employment agency, labor organization, or joint labor-management committee to make reasonable accommodations to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business;

(2) the denial of employment opportunities by a covered employer, employment agency, labor organization, or joint labor-management committee to an applicant or employee who is a qualified individual with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation; and

(3) the imposition or application by a covered employer, employment agency, labor organization, or joint labor-management committee of qualification standards, tests, selection criteria, or eligibility criteria that identify or limit, or tend to identify or limit, a qualified individual with a disability, or any class of qualified individuals with disabilities, unless such standards, tests, or criteria can be shown by such entity to be necessary and substantially related to the ability of an individual to perform the essential functions of the particular employment position.

SEC. 103. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 104. REGULATIONS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 105. ENFORCEMENT.

The remedies and procedures set forth in sections 706, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5, 2000e–8, and 2000e–9), and the remedies and procedures available under section 1981 of the Revised Statutes (42 U.S.C. 1981) shall be available, with respect to any individual who believes that he or she is being or is about to be subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 104, concerning employment.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination

SEC. 201. DEFINITION.

As used in this subtitle, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government, commuter authority (as defined in section 103(8) of the Rail Passenger Service Act), or the National Railroad Passenger Corporation.

SEC. 202. DISCRIMINATION.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a State or local government, any department, agency, special purpose district, or other instrumentality of a State or local government, a commuter authority (as defined in section 103(8) of the Rail

Passenger Service Act), or the National Railroad Passenger Corporation, or be subjected to discrimination by any such government or entity.

SEC. 203. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle, and such regulations shall be consistent with this subtitle and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

SEC. 204. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available to individuals alleging discrimination on the basis of disability in violation of this subtitle.

SEC. 205. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Section 203 shall become effective on the date of enactment of this Act.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

SEC. 211. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY.

(a) DEFINITIONS.—As used in this part:

(1) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than transportation by aircraft, intercity or commuter rail transportation, as defined in section 221, or rail transportation covered by title III) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(2) VEHICLE.—The term "vehicle" does not include an intercity or commuter rail car described in section 222 or a rail passenger car covered by title III.

(b) VEHICLES.—

(1) NEW BUSES, RAPID AND LIGHT RAIL VEHICLES, AND OTHER FIXED ROUTE VEHICLES.—It shall be considered discrimination for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an individual or entity to purchase or lease a new fixed route bus of any size, a new rapid rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) USED VEHICLES.—If an individual or entity purchases or leases a used vehicle after the date of enactment of this Act, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(3) REMANUFACTURED VEHICLES.—If an individual or entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) PARATRANSIT AS A SUPPLEMENT TO FIXED ROUTE PUBLIC TRANSPORTATION SYSTEM.—If an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for

purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of Transportation.

(d) COMMUNITY OPERATING DEMAND RESPONSIVE SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

(e) NEW FACILITIES.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services, including bus service, rapid rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(f) ALTERATIONS OF EXISTING FACILITIES.—With respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of an individual or entity later than 1 year after the date of enactment of this Act, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(g) EXISTING FACILITIES, RAPID RAIL AND LIGHT RAIL SYSTEMS, AND KEY STATIONS.—

(1) EXISTING FACILITIES.—Except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) RAPID AND LIGHT RAIL SYSTEMS.—With respect to vehicles operated by light and rapid rail systems, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

(3) KEY STATIONS.—For purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for an individual or entity to fail to make key stations in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SEC. 212. REGULATIONS.

(a) IN GENERAL.—Not later than 240 days after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 211.

(b) CONFORMANCE OF STANDARDS.—Such standards shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

SEC. 213. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or about to be subjected to discrimination on the basis of disability in violation of section 211, or regulations issued under section 212, concerning public services.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

SEC. 221. DEFINITIONS.

As used in this part—

(1) the term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C 502(8));

(2) the term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C 502(9));

(3) the term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation;

(4) the term "public entity" means the National Railroad Passenger Corporation, any commuter authority, any State or local government, and any department, agency, special purpose district, or other instrumentality of a State or local government;

(5) the term "rail passenger car" means, with respect to intercity rail transportation, single level and bi-level coach cars, single level and bi-level dining cars, single level and bi-level sleeping cars, single level and bi-level lounge cars, and food service cars;

(6) the term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(7) the term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SEC. 222. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 225, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(B) SPECIAL RULE FOR SINGLE LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair, only to the extent provided in paragraph (3).

(C) SPECIAL RULE FOR SINGLE LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

(A) SINGLE LEVEL DINING CARS.—On any train in which a single level dining car is used to provide food service—

(i) if such single level dining car was purchased after the date of enactment of this Act, table service in such car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 225, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(B) ACCESSIBILITY.—For purposes of this part, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease such a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless

the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(2) EXISTING STATIONS.—

(A) FAILURE TO MAKE READILY ACCESSIBLE.—

(i) GENERAL RULE.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 225.

(ii) PERIOD FOR COMPLIANCE.—

(I) INTERCITY RAIL.—All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(II) COMMUTER RAIL.—Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years after the date of enactment of this Act in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) DESIGNATION OF KEY STATIONS.—Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) REQUIREMENT WHEN MAKING ALTERATIONS.—

(i) GENERAL RULE.—It shall be considered discrimination, for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of this part and section 504 of the Re-

habilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of this part and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

SEC. 223. CONFORMANCE OF ACCESSIBILITY STANDARDS.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

SEC. 224. INTERIM ACCESSIBILITY REQUIREMENTS.

(a) STATIONS.—If final regulations have not been issued pursuant to section 225, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 222(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) RAIL PASSENGER CARS.—A person shall be considered to have complied with the requirements of section 222(a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws, regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act), and any standard for accessibility issued under the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) governing accessibility of such cars, to the extent that such laws, regulations, guidelines, and standards are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 225. REGULATIONS.

The Secretary of Transportation shall, within one year after the date of enactment of this Act, issue regulations, in an accessible format, necessary for carrying out this part.

SEC. 226. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available to individuals alleging discrimination on the basis of disability in violation of this part.

SEC. 227. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 222 and 225 shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) COMMERCIAL FACILITIES.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 222 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) PUBLIC ACCOMMODATION.—The term "public accommodation" means—

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park or zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation,

if such entities are privately operated and their operations affect commerce.

(4) PUBLIC TRANSPORTATION.—The term "public transportation" means transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis, but does not include commuter rail transportation or intercity rail transportation as such terms are defined in section 221(2) and (3).

(5) RAIL AND RAILROAD.—The terms "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(6) READILY ACHIEVABLE.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities, the overall financial resources of the entity and the financial resources of its facility or facilities involved in the removal of the barrier;

(B) the type of operation or operations maintained by a covered entity, including the composition and structure of the workforce, in terms of such factors as functions of the workforce, geographic separateness, and administrative relationship to the extent that such factors contribute to a reasonable determination of whether the action is readily achievable; and

(C) the nature and cost of the action needed.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

(b) CONSTRUCTION.—

(1) GENERAL PROHIBITIONS.—

(A) ACTIVITIES.—

(i) DENIAL OF PARTICIPATION.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) PARTICIPATION IN UNEQUAL BENEFIT.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) SEPARATE BENEFIT.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, accommodation, or other opportunity that is as effective as that provided to others.

(iv) LIMITATION.—For purposes of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing, or other arrangement.

(B) INTEGRATED SETTINGS.—Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—As used in subsection (a), the term "discriminated against" includes—

(A) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(B) a failure to make reasonable modifications in policies, practices, and procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(C) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in undue burden;

(D) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable;

(E) where an entity can demonstrate that the removal of a barrier under subparagraph (D) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable;

(F) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, and where the entity is undertaking an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General), except that this clause shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to a—

(1) public accommodation; and

(2) commercial facility,

it shall be considered discrimination to fail to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the standards set forth or incorporated by reference in regulations issued under this title.

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided

by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

(b) CONSTRUCTION.—As used in subsection (a), the term "discriminated against" includes—

(1) the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of an entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(B);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(C); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(D), (E), and (F);

(3) the purchase or lease of a new rail passenger car that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(4) the remanufacture of a rail passenger car that is to be used to provide public transportation so as to extend its usable life for 10 years or more, or the purchase or lease of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) HISTORICAL OR ANTIQUATED CARS.—

(1) EXCEPTION.—To the extent that compliance with subsection (b)(2)(C) or (4) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) DEFINITION.—As used in this subsection, the term "historical or antiquated rail passenger cars" means rail passenger cars—

(A) which are not less than 30 years old at the time of their use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

SEC. 305. REGULATIONS.

(a) ACCESSIBILITY STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out section 304 that shall include standards applicable to rail facilities and rail passenger cars covered under such section.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall issue regulations, in an accessible format, to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) STANDARDS.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act.

(d) INTERIM ACCESSIBILITY STANDARDS.—If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to

satisfy the requirements that buildings and facilities be readily accessible to and usable by persons with disabilities as required under sections 302(b)(2)(F) and 303, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that buildings, facilities, vehicles, and rail passenger cars be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

SEC. 306. ENFORCEMENT.

(a) IN GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) shall be available to any individual who has reasonable grounds for believing that he or she is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

(2) INJUNCTIVE RELIEF.—In the case of violations of section 302(b)(2)(D) and (F) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—

(i) IN GENERAL.—The Attorney General shall investigate alleged violations of this title, and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) ATTORNEY GENERAL CERTIFICATION.—On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which individuals with disabilities are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General, but not including punitive damages; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) SINGLE VIOLATION.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a

single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 307. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this title shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 304(b)(3) and 305 shall become effective on the date of enactment of this Act.

TITLE IV—TELECOMMUNICATIONS

SEC. 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) USE OF GENERAL AUTHORITY AND REMEDIES.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

"(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, within the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

"(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

"(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) CERTIFICATION.—

"(1) STATE DOCUMENTATION.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

"(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

"(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner

that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

"(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

"(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

"(g) COMPLAINT.—

"(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 223 or 224" and inserting "sections 223, 224, and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301"

SEC. 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Section 711 of the Communications Act of 1934 is amended to read as follows:

"SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

"Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

"(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

"(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement."

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) REHABILITATION ACT OF 1973.—Except as otherwise provided in this Act, nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation, in places of employment, in public transportation as defined in sections 211(a)(1) and 301(4), in commuter rail transportation as defined in section 221(2), or in intercity rail transportation as defined in section 221(3).

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

SEC. 502. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No individual shall discriminate against any other individual because such other individual has lawfully opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 105, 204, 213, 226, and 306 of this Act shall be available to persons aggrieved by violations of subsections (a) and (b) with respect to title I, subtitle A of title II, parts I and II of subtitle B of title II, and title III, respectively.

SEC. 503. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.

(b) CONTENTS OF GUIDELINES.—The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) QUALIFIED HISTORIC PROPERTIES.—

(1) IN GENERAL.—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) SITES ELIGIBLE FOR LISTING IN NATIONAL REGISTER.—With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) OTHER SITES.—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1)(b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SEC. 505. ATTORNEYS' FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, reasonable attorneys' fees, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) RENDERING ASSISTANCE.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a), for title I.

(B) TITLE II.—

(i) SUBTITLE A.—The Attorney General shall implement such plan for assistance for subtitle A of title II.

(ii) SUBTITLE B.—The Secretary of Transportation shall implement such plan for assistance for subtitle B of title II.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III, except for section 304, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) TECHNICAL ASSISTANCE MANUALS.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each Federal agency that has responsibility under subsection (c)(2) for implementing this Act may make grants or enter into contracts to effectuate the purposes of this Act.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

SEC. 507. ILLEGAL USE OF DRUGS.

(a) IN GENERAL.—For purposes of this Act, except as provided in subsection (c), the current illegal use of a drug does not constitute a disability.

(b) LIMITATION.—For purposes of this section, an individual shall not be considered a current illegal user of a drug if such individual—

(1) has successfully completed a supervised drug rehabilitation program and is no longer illegally using drugs, or has otherwise been rehabilitated successfully and is no longer illegally using drugs;

(2) is participating in a supervised drug rehabilitation program and is no longer illegally using drugs; or

(3) is erroneously regarded as being an illegal user of drugs but is not illegally using drugs.

It shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures designed to ensure that an individual described in paragraph (1) or (2) is no longer illegally using drugs.

(c) HEALTH AND SOCIAL SERVICES.—Notwithstanding subsection (a) and section 508(b)(3), an individual shall not be denied health or social services on the basis of the current illegal use of drugs, if such individual is otherwise entitled to such services.

(d) DRUG TESTING.—Nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of drug testing.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812); and

(2) the term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

SEC. 508. DEFINITIONS.

(a) HOMOSEXUALITY AND BISEXUALITY.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality shall not be considered impairments.

(b) CERTAIN CONDITIONS.—Under this Act, the term "disability" shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current use of illegal drugs.

PURPOSE AND SUMMARY

The purpose of the Americans with Disabilities Act (ADA) is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The Energy and Commerce Committee's action on the bill was limited to those matters within the Committee's sole or shared jurisdiction. Those matters include provisions affecting rail transportation services provided by Amtrak, commuter authorities, and private entities; provisions affecting telecommunications services for the speech- and hearing-impaired; and provisions generic to the entire bill, including certain definitions, defenses, and limitations on the scope of coverage.

H.R. 2273, as amended by the Committee, requires that, within five years, Amtrak and all commuter authorities have at least one car per train that is readily accessible to and usable by individuals

with disabilities, including individuals who use wheelchairs. It also requires that, with certain specified exceptions, all new rail passenger cars purchased or leased for intercity and commuter rail transportation be fully accessible to all disabled individuals. Wheelchair accessibility is not required in all cases for certain types of new rail cars, including single-level Amtrak passenger coaches. However, Amtrak must take various steps specified in the bill to accommodate individuals who use wheelchairs by other means.

The legislation also requires that Amtrak stations and key commuter stations, within 20 years and 3 years respectively, be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. A waiver procedure is provided in the case of certain extraordinarily expensive structural changes, permitting an extension of up to 20 years to accomplish these changes at key commuter stations. The bill also requires that any new Amtrak or commuter stations be constructed so as to be accessible to disabled individuals. It improves current law by clearly delineating the legal responsibility of Amtrak, commuter authorities, other public owners, and private owners for making stations accessible.

In the area of telecommunications, the bill requires the Federal Communications Commission (FCC) to ensure that interstate and intrastate relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals. These services must be provided by common carriers within three years, using any of several methods specified in the legislation. FCC certification would be available to state programs designed to make relay services available on an interstate basis. In addition, the Committee added a provision requiring any television public service announcement produced or funded in whole or in part by any Federal agency or instrumentality to include closed captioning for the hearing-impaired.

Background and Need for the Legislation

H.R. 2273 would provide broad-based protection against discrimination for 43 million Americans with disabilities. It covers employment, public transportation, other programs and services provided by public entities, public accommodations and services (including transportation) provided by private entities, and telecommunications.

Under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, Federal agencies, the United States Postal Service, and all other programs and activities receiving Federal financial assistance are prohibited from discriminating against an otherwise qualified individual with a disability on the basis of such disability. However, section 504 does not apply to private sector entities that do not receive Federal funds. Moreover, 17 years of experience with section 504—in the development and issuance of regulations, guidelines, and standards, in the implementation of those requirements, and in the interpretation of the law—have demonstrated the need for further legislative action in this area.

The ADA was introduced in both the House (H.R. 2273) and Senate (S. 933) on May 9, 1989. Similar legislation had been intro-

duced in the 100th Congress. These bills originated in a proposal from the National Council on Disability, an independent Federal agency authorized to make recommendations to Congress regarding individuals with disabilities. 29 U.S.C. 781. Legislation of this type was also recommended in the 1988 report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic chaired by Admiral James Watkins.

In the House, H.R. 2273 was referred to four Committees—Energy and Commerce, Education and Labor, Judiciary, and Public Works and Transportation. The Energy and Commerce Committee's action on the bill was limited to those matters within its sole and shared jurisdiction. Accordingly, the remainder of this discussion is confined to those matters.

TRANSPORTATION

Transportation plays a central role in the lives of all Americans. It is a veritable lifeline to the economic and social benefits that our Nation offers its citizens. The absence of effective access to the transportation network can mean, in turn, the inability to obtain satisfactory employment. It can also mean the inability to take full advantage of the services and other opportunities provided by both the public and private sectors.

The absence of adequate and accessible transportation can present a serious barrier to disabled individuals seeking integration into the community, impeding their efforts to lead spontaneous, independent lives. For this reason, the National Council on Disability has declared that "accessible transportation is a critical component of a national policy that promotes the self-reliance and self-sufficiency of people with disabilities."

The United States has made significant progress in this area since enactment of the Rehabilitation Act of 1973. That Act and regulations issued under it mandate that transportation systems receiving Federal financial assistance be made accessible to individuals with disabilities. As a witness before the Subcommittee on Transportation and Hazardous Materials observed in his testimony on the ADA, "The only question at this point is not whether transportation systems and all aspects of those systems should be covered, it is how they should be covered." See *Americans with Disabilities Act: Hearings on H.R. 2273 and S. 933,* Serial No. 101-95 at p. 144 (September 28, 1989) (statement of Tim Cook).

The ADA renews the commitment made by Congress in enacting section 504 to promote the mainstreaming of individuals with disabilities by providing clear, consistent, and enforceable standards addressing discrimination on the basis of disabilities and by ensuring that the Federal government plays a central role in enforcing those standards. Thus, the bill is designed to eliminate discrimination on the basis of disability in, among other areas, passenger rail transportation provided by both the public and private sectors. At the same time, 17 years of experience with the Rehabilitation Act has enabled the Congress in this legislation to address several important issues related to the accessibility of passenger rail transportation that have arisen in the administration of section 504.

First, while the Department of Transportation's (DOT) section 504 regulations, issued in 1979, set forth specific accessibility requirements for the stations and passenger cars of railroads receiving Federal financial assistance, 49 C.F.R. 27.73, the Federal Railroad Administration (FRA) apparently takes the position that those regulations apply only to Amtrak and not to commuter railroads.[1] Moreover, not all commuter railroads receive Federal financial assistance. Thus, while some commuter authorities have undertaken, as a matter of policy or pursuant to other laws, to provide accessible transportation to individuals with disabilities, others have not been willing to adopt this approach as readily or as fully.

Second, to the extent if any that the regulations cited above do apply to commuter railroads, those regulations do not distinguish appropriately between the differing operational characteristics of Amtrak and the commuter railroads. Thus, statutory clarification is needed to guide the relevant agencies—meaning not only DOT and FRA but also the Architectural and Transportation Barriers Compliance Board (ATBCB)—in the promulgation of accessibility regulations and guidelines that are sensitive to the specific nature and functions of intercity and commuter rail transportation, respectively.

Third, the section 504 regulations applicable to Amtrak demonstrate little regard for the different types of equipment used in various Amtrak trains. Instead, they simply provide that to be considered accessible a rail passenger car must have (1) space to park and secure one or more wheelchairs, (2) space to store and fold one or more wheelchairs, and (3) a restroom large enough to accommodate a wheelchair. 49 C.F.R. 27.73(b)(2). Accessibility issues, however, differ from car type to car type and from train to train, depending on the function a car is intended to serve and on whether the train is composed of single-level or bi-level cars. Legislation should require refinement of the section 504 regulations to address the need to treat these differing cars and trains appropriately.

Fourth, experience suggests that while the goals set by the Rehabilitation Act for the attainment of accessibility were commendable and worthy, the deadlines for achieving the goals set by the 1979 regulations were too ambitious relative to the resources that have been provided to Amtrak by the Federal government. The appropriation for Amtrak in fiscal year 1980, one year after the section 504 regulations were promulgated, was $873.4 million. Of that amount, $203 million was allocated for capital acquisitions and improvements. During the last decade, however, Federal support for Amtrak service has dropped dramatically. In fiscal year 1986, the amount appropriated for capital was a mere $2 million, with a total appropriation of $590.7 million. The fiscal year 1990 appropriation was $604.7 million, of which approximately $83 million was allocated for capital—a reduction over 10 years in *real* terms of more than 50 percent in the overall subsidy and more than 70 percent in the capital subsidy.

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[1] In 49 C.F.R. Part 609, the Urban Mass Transportation Administration (UMTA) has established accessibility requirements for rapid rail vehicles (49 C.F.R. 609.17) and light rail vehicles (49 C.F.R. 609.19). Obviously, these provisions do not apply to commuter rail passenger cars, whose design and safety features are regulated by the Federal Railroad Administration under the Federal Railroad Safety Act of 1970.

Torn between having to operate a viable national passenger railroad and having to invest funds to make every one of its nearly 500 stations accessible within ten years, Amtrak appropriately chose to give priority to the mission described in section 101(a) of the Rail Passenger Service Act: "provid[ing], to the extent that the Corporation's budget allows, modern, cost-efficient, and energy-efficient intercity railroad passenger service between crowded urban areas and in other parts of the country." It has not been suggested by Amtrak or any other interested party that a passenger railroad receiving Federal funds should not be required to make its system accessible; indeed, it would be inappropriate and unjustified to suggest that the civil rights of disabled Americans should be held hostage to economic considerations. However, legislation is necessary to ensure that accessibility is achieved in a manner and within a time frame that is reasonable to both Amtrak and to disabled individuals, recognizing the realities of the Federal budget process and Amtrak's financial limitations.

Finally, because the Rehabilitation Act covers only programs and agencies receiving Federal financial assistance, it does not address the need for accessibility in public transportation services provided by private entities. While very little rail passenger service is supplied by wholly private firms, there are a handful of such operations. Like all other privately owned entities serving the general public, these private railroads should be addressed by the ADA.

TELECOMMUNICATIONS

With the enactment of the Communications Act of 1934, Congress established the goal of universal telephone service for all Americans. That goal is even more important today than it was when first enunciated a half-century ago because telecommunications and the need for information drive modern society. The telephone is therefore no longer a luxury item but an essential component of our daily lives. Yet for many of the Nation's 26 million hearing- and speech-impaired persons, the goal of universal service remains an unfulfilled promise.

The inadequacy or absence of telecommunications service for these Americans is not the result of a technology gap. By connecting telecomunications devices for the deaf (TDDs) to an operator relay system, a handful of states have already put programs in place for provision of such service. In these systems, a relay operator, acting as an intermediary between the parties, translates typed TDD messages by voice and vice versa. Through these relay systems, a large segment of the population has been given an opportunity to escape from a world of virtual silence and enter into the world of modern communication. In California alone, the call volume has reached approximately 245,000 calls per month.

Yet most States have not progressed as rapidly in the deployment of this technology as some others. And in July 1989, the FCC found that interstate TDD relay systems are virtually nonexistent. This situation is incompatible both with the universal service goal embodied in the Communications Act and with other actions taken by the Congress in recent years to improve telephone service for

the hearing- and speech-impaired.[2] Legislation therefore appears necessary to establish a seamless interstate and intrastate relay system for the use of TDDs that will allow a communications-impaired caller to communicate with anyone who has a telephone, anywhere in the country.

Telephone usage among the general population continues to increase dramatically every year. It is reasonable to expect, therefore, that when an effective TDD relay network becomes a reality in the United States, it will not only enjoy heavy usage among hearing- and speech-impaired Americans but will also help integrate them into the business and social maintstream of the Nation. Legislation will thus ensure that the full benefits of the telephone network are extended and shared equally by all our citizens.

HEARINGS

The Committee's Subcommittee on Telecommunications and Finance held one day of hearings on Title V of H.R. 2273 on September 27, 1989. Testimony was received from six witnesses, with additional material submitted for the record by two parties. The witnesses testifying at the hearing were the Honorable Steny H. Hoyer, Member of Congress; Linda D. Hershman, General Manager for Government Relations, Southern New England Telephone Co. on behalf of the United States Telephone Association; Dr. I. King Jordan, President, Gallaudet University; The Honorable Gail Garfield Schwartz, Deputy Chairman, New York State Public Service Commission; Karen Peltz Strauss, Esquire, National Center for Law and the Deaf, Gallaudet University; and Merrill R. Tutton, Vice President for Consumer Services, American Telephone and Telegraph Co. Additional material was submitted for record by the Honorable Steve Gunderson, Member of Congress, and Direct Connect (Minnesota Relay Service).

The Committee's Subcommittee on Transportation and Hazardous Materials held one day of hearings on H.R. 2273 and the related bill S. 933 on September 28, 1989. Testimony was received from 13 witnesses, with additional material submitted for the record by three parties. The witnesses testifying at the hearing were The Honorable Jeffrey N. Shane, Assistant Secretary for Policy and International Affairs, Department of Transportation, accompanied by Mark Lindsey, Chief Counsel, Federal Railroad Administration and John Cline, Associate Administrator for Budget and Policy, Urban Mass Transportation Administration; W. Graham Claytor, Jr., President, National Railroad Passenger Corporation (Amtrak), accompanied by David Carol, Senior Director, Government Affairs; Lawrence Roffe, Executive Director, Architectural and Transportation Barriers Compliance Board, accompanied by Dennis Cannon, Accessibilities Specialist; Philip Calkins, Director of Public Affairs, President's Committee on Employment of People with Disabilities; Tim Cook, Executive Director, National Disability Action Center;

[2] In the Hearing Aid Compatibility Act of 1988 (47 U.S.C. 610), for example, Congress required all telephones to be able to be used with a hearing aid. In the Telecommunications Accessibility and Enhancement Act (40 U.S.C. 762), the Federal government was required to provide TDD relay systems so that hearing- and speech-impaired citizens could communicate with their Government officials and elected representatives.

Scott Fazekas, American Institute of Architects; Philp A. Pagano, Assistant Executive Director for Corporate Administration, Chicago METRA; Henry Miller, Director of Government and Community Relations, New York Metropolitan Transit Authority; and Carol Lavoritano, Director, Program Policy and Analysis Department, Southeastern Pennsylvania Transportation Authority.

COMMITTEE CONSIDERATION

On October 12, 1989, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill H.R. 2273, amended, by a voice vote, a quorum being present.

On March 13, 1990, the Committee met in open session and, by unanimous consent, discharged the Subcommittee on Transportation and Hazardous Materials from the further consideration of the bill H.R. 2273. On the same day, the Committee ordered reported the bill H.R. 2273, with an amendment, by a recorded vote of 40 to 3, a quorum being present.

SUBSEQUENT ACTION IN THE HOUSE

H.R. 4807, a bill to establish clear and comprehensive prohibition of discrimination on the basis of disability, was introduced on May 14, 1990 and constitutes an amalgamation of the differing versions of H.R. 2273 ordered reported by the four Committees that considered the earlier bill. When H.R. 2273 is considered on the floor, the text of H.R. 4807 is expected to be made in order under the rule as original text. H.R. 4807 contains the language ordered reported by the Committee on Energy and Commerce applicable to intercity and commuter rail transportation, as well as to rail transportation service provided by private entites. Accordingly, the section-by-section analysis in this report covering these rail transportation matters serves as the relevant analysis for the text of the legislation to be considered by the House.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee makes the oversight findings and recommendations reflected in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings have been submitted to it by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost of implementing and administering H.R. 2273, as amended, will be no more than that stated by the Congressional Budget Office in the estimate accompanying this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 6, 1990.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate of H.R. 2273, the Americans with Disabilities Act of 1990, as ordered reported by the Committee on Energy and Commerce on March 13, 1990. This revision includes an estimate of the impact of the bill on the National Railroad Passenger Corporation (Amtrak).

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

Attachment.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: H.R. 2273.
2. Bill title: Americans with Disabilities Act of 1990.
3. Bill status: As ordered reported by the House Committee on Energy and Commerce on March 13, 1990.
4. Bill purpose: To prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunication services.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1991	1992	1993	1994	1995
Estimated authorization level	5	6	19	31	31
Estimated outlays	5	6	19	31	31

Basis of estimate: Equal Employment Opportunities Commission (EEOC). Title I—Employment—would prohibit discrimination by employers against qualified individuals with disabilities. H.R. 2273 would require the EEOC to issue regulations to carry out Title I and to provide for enforcement of the provisions. In addition, the EEOC would ensure the availability of a technical assistance manual to those entities with rights of responsibilities under this act. Although no specific authorization level is stated in the bill, CBO estimates the cost of these activities would be $1 million in fiscal year 1991, $2 million in fiscal year 1992, $15 million in fiscal year 1993, and $27 million annually in fiscal years 1994-95. This estimate is based on the EEOC's past experience with enforcing civil rights standards and assumes that approximately 259 additional full-time equivalent employees would be needed for the Com-

mission's 50 field offices and that approximately 58 additional staff would be needed for the EEOC headquarters.

Department of Transportation: H.R. 2273 would direct the Secretary of Transportation to issue regulations including standards applicable to the facilities and vehicles covered by these provisions. Also, the Secretary of Transportation would make available technical assistance manuals to those with rights and responsibilities under this act. CBO estimates that the cost to the federal government of developing these regulations and manuals would be about $0.5 million in fiscal year 1991.

In addition, the bill would require the National Railroad Passenger Corporation (Amtrak) to take a number of steps to make stations and trains accessible to the handicapped. Based on information provided by Amtrak, CBO estimates that these requirements would increase its costs by $2 million to $3 million per year, mostly to make stations accessible. Amtrak is a private corporation and is not part of the federal government. However, it receives a substantial subsidy in the form of government grants each year, and some of its additional costs could be borne by the government through the grant program.

The federal government might also bear some part of the costs of making transit services accessible to the handicapped, which are discussed below. Like Amtrak, the capital and operating costs of most mass transit systems are heavily subsidized by the federal government through grants by the Department of Transportation. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to H.R. 2273.

Architectural and Transportation Barriers Compliance Board: H.R. 2273 would require the board to issue minimum guidelines that would supplement existing minimum guidelines for accessible design of buildings, facilities and vehicles. Although no specific authorization level is stated in the bill, CBO estimates the cost of these guidelines would be $0.2 million in fiscal year 1991. This estimate assumes salaries and expense costs of $104,000 and research contract costs of $80,000. Although the bill does not state specifically that the guidelines should be maintained, the board currently maintains the existing guidelines and most likely would maintain the new guidelines. CBO estimates the cost of maintaining the guidelines would be $0.2 million every other year beginning in fiscal year 1993.

Department of Justice: H.R. 2273 also would require the Attorney General to develop regulations to prohibit discrimination in public services and to investigate alleged violations of public accommodation provisions, which would include undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. In addition, H.R. 2273 would require the Department of Justice to make available technical assistance manuals to those with rights and responsibilities under this act. We estimate the cost of these activities would be $3 mil-

lion in fiscal year 1991 and $4 million annually in fiscal years 1992-1995.

Federal Communications Commission (FCC): H.R. 2273 requires the FCC to prescribe and enforce regulations with regard to telecommunications relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunications relay services, (2) establishing minimum standards that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point to origination to point of termination. In addition, H.R. 2273 would require the FCC to make available technical assistance manuals to those with rights and responsibilities under this act. While no authorization level is stated, CBO estimates the cost of developing and enforcing these regulations to be $0.1 million in fiscal year 1991, $0.1 million in fiscal year 1992, $0.2 million in 1993, $0.2 million in 1994, and $0.1 million in 1995.

H.R. 2273 would require all federally funded public service announcements to include closed captioning. CBO estimates that the cost to the federal government for closed captioning public service announcements would be an additional $235 for a 60-second spot. The cost could be lower if the public service announcement is only partially funded by the federal government. It is difficult to determine how many public service announcements—funded in whole or part by the federal government—are produced each year. Based on information from several federal agencies, CBO expects that the Department of Defense would have to close caption its public service announcements and the Department of Agriculture would have to close caption its Woodsy Owl announcements. The additional cost to the federal government for these announcements would be less than $10,000 annually. This estimate does not include announcements that are produced and broadcast locally or announcements that are produced for use in public schools. For example, local guard and reserve organizations produce and broadcast their own public service announcements, but the production cost is picked up by the Department of Defense.

In addition to the federal costs of establishing and enforcing new regulations, H.R. 2273 could also affect the federal budget indirectly through changes in employment and earnings. If employment patterns and earnings were to change, both federal spending and federal revenues could be affected. There is, however, insufficient data to estimate these secondary effects on the federal budget.

6. Estimated cost to State and local governments: Enactment of H.R. 2273 would result in substantial costs for State and local governments, but CBO cannot estimate the total impact with any certainty. Most of these costs would involve actions required to make public transit systems accessible to the handicapped. In addition, some local governments might incur additional costs to make newly-constructed public buildings accessible, as required by this bill, but most already face similar requirements.

Public buildings.—H.R. 2273 would mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly-

constructed, state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, in rare cases, for some local governments not to have such law. These municipalities would incur additional costs for making newly-constructed, locally-owned public buildings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs if the accessibility features are included in the original building design. Otherwise the costs could be much higher.

Public transit.—CBO cannot provide a comprehensive analysis of the impact of H.R. 2273 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

H.R. 2273 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be accessible to handicapped persons.

Bus and Paratransit Services.—CBO estimates that it would cost between $20 million and $30 million a year over the next several years to purchase additional lift-equipped buses as required by H.R. 2273. Additional maintenance costs would increase each year as lift-equipped buses are acquired, and would reach $15 million by 1994. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About 38 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,800 lift-equipped buses. Assuming that the added cost per bus for a lift will be $10,000 to $15,000 at 1990 prices, operators would have to spend from $20 million to $30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average $1,500, we estimate that it would cost about $2 million in 1991, increasing to $15 million in 1995, to maintain and operate the additional lift-equipped buses required by H.R. 2273.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time

needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would use the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may very considerably. In particular, existing Environmental Protection Agency emissions regulations may result in accelerated purchases over the next two years as operators attempt to add to their fleets before much more stringent standards for new buses go into effect. Such variations in purchasing patterns would affect the costs of this bill in particular years. In addition, these estimates reflect total costs for all transit operators, regardless of their size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation. Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratranist requirement, but it could be singificant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.

New regulations recently proposed by the Department of Transportation concerning bus and paratransit services include requirements much the same as those in H.R. 2273. Should these proposed rules become final in their current form, the mandates of the bill would have much less effect.

Transit Facilities.—We expect that the cost of compliance with the provisions concerning key stations would be significant for a number of transit systems, and could total several hundred million dollars (at 1990 prices) over 20 years. The precise level of these costs would depend on future interpretation of the bill's requirements and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.

In 1979, CBO published a study, (*Urban Transportation for Handicapped Persons: Alternative Federal Approaches,* November 1979), that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapted key subway, commuter and light rail stations and vehicles for wheelchair users would be $1.1 billion to $1.7 billion, while the additional annual operating and maintenance costs would be $14 million to $21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting existing key stations and transit vehicles would require additional capital expenditures of $2.5 billion over 30 years and would result in additional annual operating costs averaging $57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to severely overstate these costs. The depart-

ment estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30-year costs to below $1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of H.R. 2273, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, it seems likely that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaption of key stations. These plans would probably satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than $1 billion (in 1990 dollars) and might be considerably less.

7. Estimate comparison: None.

8. Previous CBO estimate:

CBO prepared an estimate of S. 933, Americans with Disabilities Act of 1989, as ordered reported by the Senate Committee on Labor and Human Resources on August 2, 1989. We also prepared an estimate of H.R. 2273, Americans with Disabilities Act of 1989, as ordered reported by the Committee on Education and Labor on November 14, 1989. The estimates in this bill are similar to those of the Education and Labor version of H.R. 2273 and are substantially different from those in the Senate bill.

9. Estimate prepared by: Cory Leach (226-2820) and Marjorie Miller (226-2860).

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

Federal expenditures on Americans with disabilities now exceed $60 billion annually, with $57 billion spent on disability benefits and other programs that are premised on the dependency of the people being served and the remainder spent on education, training, and rehabilitation. These figures do not include the funds expended by State and local governments, or by private firms and organizations. Eligibility for most of these benefits is based upon the inability to engage in substantial gainful activity or upon low income criteria. The Committee believes that this legislation—by substantially increasing the likelihood that many of the 12 million disabled Americans of working age who are unemployed but want to work will become taxpayers and consumers, and by otherwise greatly reducing the cost of dependency—will have no inflationary effect and may well have an anti-inflationary effect.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

Subsection (a) provides that this Act may be cited as the "Americans with Disabilities Act of 1990".

Subsection (b) sets forth a table of contents for the bill.

SECTION 2. FINDINGS AND PURPOSES

Subsection (a) sets forth the Congressional findings demonstrating the need for enactment of this legislation.

Subsection (b) describes the purposes of the legislation.

SECTION 3. DEFINITIONS

Section 3 contains definitions for certain terms used throughout the bill.

The term "auxiliary aids and services" is defined to include (A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (C) acquisition or modification of equipment or devices; and (D) other similar services and actions.

The term "disability" is defined to mean, with respect to an individual, (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. These three prongs of the definition are intended to have the same meanings given to the corresponding provisions used in the definitions of the term "individual with handicaps" in section 7(8)(B) of the Rehabilitation Act of 1973 and the term "handicaps" in section 802(h) of the the Fair Housing Act, and in regulations issued under those statutes. The change to the use of the word "disability" rather than "handicap" in the defined term itself is intended simply to make use of currently accepted terminology, not to have any substantive effect.

The term "State" is defined to mean each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

SECTION 4. DEFENSES

Subsection (a) provides that, in general, it shall be a defense to a charge of discrimination under the bill that an alleged application of qualification standards, selection criteria, performance standards, or eligibility criteria that exclude or deny services, programs, activities, benefits, jobs, or other opportunities to an individual with a disability has been demonstrated by the covered entity to be both necessary and substantially related to the individual's ability to perform or participate in, or take advantage of the essential components of, such service, program, activity, benefit, job, or other opportunity, notwithstanding the provision of applicable reasonable accommodations, modifications, or auxiliary aids or services.

Subsection (b) permits the "qualification standards" described in subsection (a) to include a requirement that (1) the current use of alcohol or drugs by an alcoholic or drug abuser not pose a direct threat to property or the safety of others in the workplace or program; or (2) an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of other individuals in the workplace or program.

In order to meet the "direct threat" standard under the latter of these two provisions, a person must pose a significant risk of transmitting the disease or infection to others in the workplace or program that cannot be eliminated by reasonable accommodation. See *School Board of Nassau County v. Arline,* 480 U.S. 273, 287 n.16 (1987).

TITLE I—EMPLOYMENT

Title I prohibits employment discrimination against any qualified individual with a disability. The Committee notes that the matters addressed in this title fall outside the Committee's jurisdiction and that, accordingly, no changes in the introduced bill have been made by the Committee in this title. The analysis below reflects the provisions of the bill as introduced. Those provisions were considered separately by the Committee on Education and Labor during its markup on November 14, 1989. Readers should consult the report of the Education and Labor Committee for an analysis of that Committee's action in this regard.

SECTION 101. DEFINITIONS

This section provides definitions for the following terms: "Commission", "employee", "employer", "person" (and related terms), and "qualified individual with a disability".

SECTION 102. DISCRIMINATION

Subsection (a) specifies in general that an employer, employment agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any term, condition, or privilege of employment.

Subsection (b) sets forth several specific examples of discrimination that are prohibited.

SECTION 103. POSTING NOTICES

This section incorporates by reference the notice-posting requirements in section 711 of the Civil Rights Act of 1964.

SECTION 104. REGULATIONS

This section requires the Equal Employment Opportunity Commission (EEOC) to issue regulations to carry out this title within 180 days after enactment.

SECTION 105. ENFORCEMENT

This section incorporates by reference the enforcement provisions in sections 706, 709, and 710 of the Civil Rights Act of 1964,

and, for acts of intentional discrimination, the remedies and procedures of 42 U.S.C. 1981.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination

SECTION 201. DEFINITION

This section defines the term "qualified individual with a disability" for purposes of this subtitle to mean an individual with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a commuter authority (as defined in section 103(8) of the Rail Passenger Service Act (RPSA)), the National Railroad Passenger Corporation (commonly known as Amtrak), or a department, agency, special purpose district, or other instrumentality of a State or local government.

The statutory requirement that a person with a disability must be able to meet the "essential eligibility requirements" of a program reflects the long-standing section 504 principle that, to the extent of the manifestations of a person's disability prevent that person from meeting the basic eligibility requirements of the program—for example, by causing substantial interference with the operation of the program or by posing a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation (subject, of course, to the same limitations on the application of this concept as are applicable in other titles of the bill)—that manifestation of the person's disability may be taken into account by the operator of the program in denying service to the person with the disability. Of course, the prejudice or stereotypical views of other individuals cannot be used as the basis for claiming a substantial interference with the operation of a program. Consistent with current law, the assessment as to whether an individual with a disability meets the essential eligibility requirements of a program must take into account whether a reasonable modification to rules, policies, and procedures, or the provision of auxiliary aids or services, would enable the person to meet the essential eligibility requirements.

SECTION 202. DISCRIMINATION

This section provides that, subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disabiity, be excluded from participation in or be denied the benefits of the services, programs, or activities of a commuter authority (as defined in section 103(8) of the RPSA), the National Railroad Passenger Corporation (commonly known as Amtrak), a State or local government, or any department, agency, special purpose district, or other instrumentality of a State or local government.

SECTION 203. REGULATIONS

This section requires the Attorney General, within one year after the date of enactment, to promulgate regulations in an accessible format implementing this subtitle. With respect to "program accessibility, existing facilities" and "communications", these regulations are required to be consistent with the regulations and analysis found in 28 C.F.R. Part 39 applicable to Federally conducted activities under section 504 and this subtitle. In all other respects, the regulations are required to be consistent with this subtitle and with the coordination regulations found in 28 C.F.R. Part 41 (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978) applicable under section 504 to recipients of Federal financial assistance.

SECTION 204. ENFORCEMENT

This section provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available to individuals alleging discrimination on the basis of disability in violation of this subtitle.

SECTION 205. EFFECTIVE DATE

Under this section, the requirements imposed on the Attorney General in section 203 with respect to the issuance of regulations become effective on the date of enactment. In all other respects, this subtitle shall become effective 18 months after the date of enactment.

Subtitle B—Actions Applicable to Public Transportation Provided by Pubic Entities Considered Discriminatory

Part I—Public Transportation Other Than By Aircraft or Certain Rail Operations

This part prohibits discrimination against individuals with disabilities in the provision by certain public entities of public transportation other than by aircraft, intercity rail, commuter rail, or rail transportation covered by title III. The Committee notes that the matters addressed in this part—specifically, requirements imposed on public entities operating buses, rapid rail vehicles, light rail vehicles, and other fixed route vehicles, including requirements with respect to paratransit, demand responsive systems, and facilities and stations of such entities—fall outside the Committee's jurisdiction. Accordingly, no changes in the introduced bill other than those of a technical or conforming nature have been made by the Committee in this part. Readers should consult the report of the Committee on Public Works and Transportation for an analysis of that Committee's action with respect to these matters.

Under Rule X, clause 1(h)(11) of the Rules of the House of Representatives, the Committee on Energy and Commerce has exclusive jurisdiction over matters pertaining to intercity and commuter railroads. The requirements of the bill with respect to these entities are analyzed under part II, *infra*.

SECTION 211. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION CONSIDERED DISCRIMINATORY

Subsection (a) provides definitions for the terms "public transportation" and "vehicle" as used in this part. The definition of the term "public transportation" explicitly excludes transportation by aircraft, intercity or commuter rail transportation as defined in section 221, or rail transportation covered by title III. The definition of the term "vehicle" explicitly excludes an intercity or commuter rail car described in section 222 or a rail passenger car covered by title III.

Subsection (b) describes various actions with respect to public transportation that shall be considered discriminatory under the bill. (In the following analysis of this section and succeeding sections of this subtitle, it should be assumed that any prohibition on discrimination applies for purposes of both the ADA and section 504 of the Rehabilitation Act unless otherwise specified.)

—Paragraph (1) specifies that it shall be considered discrimination for an individual or entity to purchase or lease a new fixed route bus of any size, a new rapid rail vehicle, a new light rail vehicle, or any other new fixed route vehicle to be used for public transportation and for which a solictation is made later than 30 days after the date of enactment, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

—Paragraph (2) specifies that if an individual or entity purchases or leases a used vehicle after the date of enactment, such individual or entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

—Paragraph (3) specifies that if an individual or entity remanufacturers a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its usable life for five years or more, the vehicle shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Subsection (c) specifies that if an individual or entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination for such individual or entity to fail to provide paratransit or other special transportation services sufficient to provide a level of services comparable to that provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities, in accordance with service criteria established under regulations issued by the Secretary of Transportation (Secretary).

Subsection (d) specifies that if an individual or entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination for such individual or entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of

enactment, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to the general public.

Subsection (e) provides that it shall be considered discrimination for an individual or entity to build a new facility that will be used to provide public transportation services that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Subsection (f) provides that with respect to a facility or any part thereof that is used for public transportation and that is altered by, or on behalf of, or for the use of an individual or entity later than one year after the date of enactment, in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination for such individual or entity to fail to make the alternations in such a manner that, to the maximum extent feasible, the altered portion of the facility, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Subsection (g) sets forth the requirements for making existing facilities, rapid and light rail systems, and key stations in such systems, accessible to and usable by individuals with disabilities.

—Paragraph (1) provides that, except as provided in paragraph (3), with respect to existing facilities used for public transportation, it shall be considered discrimination for an individual or entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to an usable by individuals with disabilities, including individuals who use wheelchairs.

—Paragraph (2) provides that, with respect to vehicles operated by light and rapid rail systems, it shall be considered discrimination for an individual or entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than five years.

—Paragraph (3) provides that it shall be considered discrimination for an individual or entity to fail to make key stations in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than three years after the date of enactment. The paragraph also provides an exception under which the time limit may be extended by the Secretary up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

SECTION 212. REGULATIONS

Subsection (a) provides that the Secretary shall, not later than 240 days after the date of enactment, issue regulations in an acces-

sible format that include standards applicable to facilities and vehicles covered under section 211.

Subsection (b) provides that the standards described in subsection (a) shall be consistent with the minimum guidelines issued by the ATBCB under section 504(a) of the ADA.

SECTION 213. ENFORCEMENT

This section provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being or is about to be subjected to discrimination on the basis of disability in violation of section 211, or regulations issued under section 212, concering public services.

Part II—Public Transportation by Intercity and Commuter Rail

SECTION 221. DEFINITIONS

This section sets forth the definitions of key terms used in this part.

Paragraph (1) defines the term "commuter authority" to have the meaning given such term in section 103(8) of the RPSA.

—Paragraph (2) defines the term "commuter rail transportation" the have the meaning given the term "commuter service" in section 103(9) of the RPSA.

—Paragraph (3) defines the term "intercity rail transportation" to mean transportation provided by Amtrak.

—Paragraph (4) defines the term "public entity" to mean Amtrak, any commuter authority, any State or local government, and any department, agency, special purpose district, or other instrumentality of a State or local government.

—Paragraph (5) defines the term "rail passenger car" to mean, with respect to intercity rail transportation, the following: single-level and bi-level coach cars; single-level and bi-level dining cars; single-level and bi-level sleeping cars; single-level and bi-level lounge cars; and food service cars.

—Paragraph (6) defines the term "responsible person" to mean (A) in the case of a station more than 50 percent of which is owned by a pubic entity, such public entity; (B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulations by the Secretary; and (C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulations by the Secretary.

The inclusion in the ADA of the term "responsible person" is designed to improve upon current law, which arguably subjects private parties owning passenger rail stations to the legal and financial obligations imposed under 49 C.F.R. 27.73(a)(2). These regulations set forth the requirements and timetable for making existing passenger rail stations accessible. As a matter of equity and sound transportation policy, the Committee views it as unfair and unwise to impose these obligations on private parties. The vast majority of

Amtrak's 499 stations, for example, are owned by freight railroads who have little or no business interest in the continuation of rail passenger service at these stations. The Committee believes that the legal an financial responsibilities associated with making existing intercity and commuter passenger rail stations accessible or with making alterations to such stations in an accessible manner should be improved upon those parties that actually operate the rail service being provided to passengers at each location or, where applicable, upon those public entities that own all or a share of such stations.

Under the bill, the Secretary is directed to issue regulations allocating responsibility in various circumstances "on an equitable basis" among Amtrak and the commuter railroad (or railroads) providing service to a station, or among the various railroads and other public entity owners. In making this allocation, the Committee expects the Secretary to apply the principle of "costs to the cost-causer," at least to the extent it is practicable to ascertain cost causation, and in addition to weigh such other sound economic, transportation, and other public policy considerations as will lead to an "equitable" result.

Paragraph (7) defines the term "station" to mean the portion of a property located appurtenant to a right-of-way on which Amtrak or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property. However, the term does not include flag stops, which are locations that are not regularly scheduled stops and at which trains will stop to entrain or detrain passengers only on signal or advance notice.

The Committee notes its awareness of the many different circumstances in which a "station" may be found and thus emphasize the control requirement as an essential element of the definition. By way of example, the "station" (as defined in the bill) at the building and surrounding property commonly known as Washington Union Station is acutally only a part of that building and surrounding property. Thus, restrooms located in the designated passenger waiting areas adjacent to the gates would clearly be part of the "station" for purposes of the legislation. However, restrooms in a public accommodation or common area located in another part of the building not under the control of Amtrak or another public entity providing rail transportation would not be part of the "station".

SECTION 222. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY

In general

This section sets forth the actions and omissions by Amtrak and commuter railroads that would constitute discrimination for purposes of the ADA and section 504 of the Rehabilitation Act of 1973. In general, these provisions may be read as imposing various re-

quirements on the railroads in three areas: accessibility of rail passenger cars, accessibility of rail passenger trains, and accessibility of rail passenger stations. In the interest of clarity and convenience, certain language recurring throughout the section and pertaining to multiple provisions is addressed at this point.

In describing cars and stations, the section frequently uses the phrase "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs". This term refers to the ability of individuals with disabilities, including individuals who use wheelchairs, to enter into, exit from, and safely and effectively use a rail passenger car or station used in public transportation. Nothing in this legislation is intended to supersede or supplant the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 et seq.). Accordingly, modifications designed to improve or achieve accessibility and usability be compatible in all respects with all rules, regulations, standards, and orders issued under that Act.

The Committee notes that the concepts of accessibility and usability entail more than simply the notion of wheelchair accessibility. For example, the design of new railroad cars might be required to include non-slip surfaces and contrast edges on steps, as well as handrails in boarding areas, to make the car accessible to and usable by individuals with mobility impairments who do not use wheelchairs. In addition, the design might be required to include adequate illumination in boarding areas, tactile markings for identifying basic amenities and circulation needs, contrasting characters on signage, a public address system for audible announcements, and automatic door closing alarms to make the care accessible to and usable by individuals with other disabilities.

The section specifically refers to "individuals who use wheelchairs" among the individuals with disabilities who must be provided access in order to emphasize clearly that the section's requirements apply even to those individuals whose particular disability requires the most extensive modifications in order to assure access. This specific reference to individuals who use wheelchairs is made because of past misinterpretations of the nature and extent of obligations under section 504 of the Rehabilitation Act of 1973. The Committee nevertheless wishes to emphasize that the obligation to provide public transportation in a non-discriminary fashion applies to all persons with disabilities, including people with sensory impairments, all forms of mobility impairments, and those with cognitive impairments such as mental retardation. For example, it is the Committee's intent that the obligation to provide lift service applies not only to people who use wheelchairs, but also to other individuals who have difficulty in walking. Thus, for example, people who use crutches or walkers should be allowed to use a lift.

Except as specifically provided, however, the section does not *require* the provision of lifts, ramps, or other equipment in any *particular* circumstance. In this vein, the Committee believes it is important to distinguish between the accessibility of cars and the accessibility of stations because the two concepts, although related, are nonetheless quite different. A single car stops at many stations, each of which may have differing design characteristics; a single station may be visited by many different types of cars. This simple reality requires some flexibility in the achievement of the ADA's

goals. Thus, the requirement that newly purchased cars be accessible to and usable by individuals with disabilities does not require that the car be equipped with an on-board lift. Nor does the section necessarily dictate the raising of the passenger platform at any given station. In many instances on both Amtrak and commuter railroads, raising the platform would create clearance problems and safety hazards for freight cars using the same track as that running through a station. This problem, and the engineering complications it creates, were well-summarized in a recent trade publication:

> High level platforms represent the most workable solution to the problem of handicapped access, and they can significantly reduce station dwell times required for passenger boarding and alighting. High level platforms can readily be installed in terminals or on-line stations where passenger trains are operated exclusively, but freight equipment clearances can present a problem whenever mixed traffic must be provided for.
>
> On a few multiple track routes, such as the Northeast Corridor, freight traffic can be limited to certain tracks, permitting the use of high level platforms on exclusive passenger tracks. For a new station on the CSX main line at Greenbelt, Md., where the [*sic*] Maryland's MARC commuter service will be linked with the Washington Metro, the agency is simply building a side track in order to use high level platforms. Still another alternative that's been considered by some roads has been the use of gauntlet tracks to provide adequate clearance for freight trains passing high level platforms. [From "Commuter Rail: 'All Aboard, America!," *Railway Age,* p. CG3, CG7 (October 1988).]

While such creative solutions are certainly acceptable means of achieving accessibility under this legislation, they are also extremely expensive and will entail negotiations with freight railroads who do not carry passengers at all. It is therefore *not* the Committee's intention to require the addition, removal, modification, or movement of any tracks in the manner described by the article, whether for Amtrak or for commuter service. For low-platform stations where freight equipment is also operated, portable ramps or lift devices on the station platform may be the only feasible means available to make the station accessible. In other cases, so-called "mini-high" platforms in one or more locations at the station may be preferable. The same considerations apply to the construction of new stations in these situations.

Commuter railroads are given a maximum of three years from the date of enactment to make their key stations accessible, and they may seek an extension of up to 20 years for certain extraordinarily expensive structural changes; Amtrak is given a maximum of 20 years to make its stations accessible. In light of the Committee's intention expressed above not to mandate the installation of on-board lifts in new cars or the raising of all low-level station platforms, there may be times at which a new car is itself accessible and usable but not able to be entered from every station it serves

or from every point within a station. In this circumstance, so long as the railroad is complying or has complied with the requirement of this section that existing stations be made accessible and usable "as soon as practicable", the Committee does not intend that the railroad be chargeable with discrimination. Of course, nothing in this section is intended to prohibit a railroad from designing onboard lifts into its cars if that railroad determines that such devices provide a feasible means of ensuring accessibility on its system.

Intercity rail transportation

Subsection (a) sets forth the requirements of the ADA applicable to Amtrak cars and trains, as well as to certain services provided on such cars and trains.

Paragraph (1) of the subsection states that it shall be considered discrimination for Amtrak to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 225, as soon as practicable but in no event later than five years after the date of enactment. Under the "as soon as practicable" standard, Amtrak, to the extent that its accessible rolling stock is limited, shall have discretion to determine where and how such rolling stock is to be deployed, taking into account differing ridership levels on its respective routes, in the course of achieving full compliance with this subsection by the end of the five-year period.

Paragraph (2)(A) sets forth a general rule with respect to the purchase of new Amtrak cars. The paragraph states that, except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed in regulations issued by the Secretary under section 225. The use of the phrase "except as otherwise provided . . . with respect to individuals who use wheelchairs" reflects the Committee's intent, as described above, to require the design of all new cars to incorporate accessibility and usability features for disabled individuals other than those who use wheelchairs, even if in certain cases special rules or alternative requirements are prescribed in order to balance the needs of wheelchair users with the operational or structural limitations posed by a particular type of railroad car.

In those cases where no special rule or alternative requirement is prescribed, the Committee intends that the accessibility features with respect to wheelchairs found in current Federal Railroad Administration regulations at 49 C.F.R. 27.73(b)(2) should apply. In this regard, the Committee emphasizes that neither the ATBCB nor the Secretary of Transportation is granted authority under this Act to require the widening of aisles or passageways in railroad cars to accommodate wheelchairs. In light of the discussion of paragraph (4)(A) below regarding the Committee's determination not to sanction the car-to-car movement of individuals who use wheel-

chairs (except in one narrow circumstance), the Committee sees no valid purpose to be served by permitting this legislation to serve as authority to mandate the narrowing of seats, bedrooms, kitchen facilities, or other train amenities, which would have to occur in order to widen such aisles and passageways. Such a move would unduly and unnecessarily inconvenience other passengers, threaten Amtrak revenues, and put Amtrak to the tremendous expense of redesigning virtually all of its cars.

Paragraphs (2)(B) through (2)(D) set forth several special rules with respect to wheelchair accessibility in certain specific types of Amtrak cars. Paragraph (2)(B) provides that single-level passenger coaches shall be required to:

—be able to be entered by an individual who uses a wheelchair;
—have space to park and secure a wheelchair;
—have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and
—be equipped with a restroom usable by an individual who uses a wheelchair;

but only to the extent provided in paragraph (3), which is described below.

Paragraph (2)(C) provides that single-level dining cars shall not be required to:

—be able to be entered from the station platform by an individual who uses a wheelchair (with or without a lift or similar device); or
—have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

Paragraph (2)(D) provides that bi-level dining cars shall not be required to:

—be able to be entered by an individual who uses a wheelchair;
—have space to park and secure a wheelchair;
—have a seat to which a passenger in a wheelchair can transfer, or space to fold and store such passenger's wheelchair; or
—have a restroom usable by an individual who uses a wheelchair.

Paragraph (3) sets forth the requirements with respect to wheelchair accessibility for single-level passenger coaches referred to in paragraph (2)(B) above. The paragraph requires that as soon as practicable, but in no event later than five years after the date of enactment, on each train that includes one or more single-level rail passenger coaches, Amtrak must provide a number of spaces:

—to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and
—to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train.

The paragraph further requires that as soon as practicable, but in no event later than ten years after the date of enactment, on each train that includes one or more single-level rail passenger coaches, Amtrak must provide a number of spaces:

—to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

—to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train.

These spaces are required by the bill to be located in single-level rail passenger coaches or food services cars. However, not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car. Single-level coaches and food service cars on which the required spaces are located must be equipped under the bill with a restroom usable by an individual who uses a wheelchair. Finally, the coach or food service car must be able to be entered from the station platform by an individual who uses a wheelchair.

Paragraph (4) addresses the provision of food service on Amtrak trains to passengers who use wheelchairs and to others traveling with such passengers. The requirements vary, depending on whether the dining car on a train is a single-level or bi-level car, and on whether the dining car was purchased before or after the ADA's date of enactment.

Paragraph (4)(A) provides that on any train which includes a single-level dining car purchased after the date of enactment, table service in that dining car shall be provided to a passenger who uses a wheelchair if the following three conditions are met:

—the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

—the passenger using the wheelchair can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described above without the necessity of the train being moved within the station; and

—space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining care at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat).

Paragraph (4)(A) further requires that unless not practicable, Amtrak shall place an accessible car adjacent to the end of a dining car described above through which an individual who uses a wheelchair can enter. The Committee notes that this provision represents the *only* instance in the legislation in which the right of a passenger who uses a wheelchair to pass between cars is recognized. During consideration of the bill, considerable attention was devoted to the question of whether the movement of a passenger who uses a wheelchair through the vestibule connecting adjacent cars should be permitted. In the Committee's judgment, such movement as a general rule constitutes an unsafe practice that can seriously endanger the passenger and in turn subject Amtrak or other passenger railroads to major lawsuits. Thus, it is not the intention of the bill to require any railroad or commuter authority to provide access between cars on a train for passengers using wheelchairs,

except in the single instance described in this paragraph. In that single instance, the right of a disabled passenger to have an opportunity to eat in an integrated setting appeared to the Committee, on balance, to outweigh the safety concerns, particularly because the movement between cars is likely to occur when the train is stopped. There are situations, however, in which a train, in departing from a station, will be required to switch from one track to another, subjecting any passenger in the vestibule at that moment to some degree of danger. The Committee does not believe that Amtrak should be held responsible for any injuries to such a passenger, whether disabled or not, who enters the vestibule at that inopportune moment.

In addition to the requirments set forth above with respect to trains containing single-level dining cars purchased after the date of enactment, paragraph (4)(A) also requires that on any train in which a single-level dining car (regardless of date of purchase) is used to provide food service, appropriate auxiliary aids and services, including a hard service on which to eat, shall be provided at the passenger's seat or sleeping compartment to ensure that other food service equivalent to that in the dining car is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Paragraph (4)(B) similarly provides that on any train in which a bi-level dining car (regardless of date of purchase) is used to provide food service, appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided at the passenger's seat or sleeping compartment to ensure that other food service equivalent to that in the dining car is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals. If such train also includes a bi-level lounge car purchased after the date of enactment, table service shall be provided in such lounge car to individuals who use wheelchairs and to other passengers.

The Committee notes that the requirement to provide table service to other passengers in such a lounge car does not require that Amtrak, in effect, treat the table area of the lounge car as through it were itself a dining car. Although the Committee expects Amtrak in most instances to provide table service in the lounge car as a matter of course to passengers dining with a disabled individual, Amtrak has discretion to establish reasonable conditions for the availability to other passengers of table service in the lounge car.

Commuter rail transportation

Paragraph (2) of subsection (b) states that it shall be considered discrimination for a commuter authority to fail to provide at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 225, as soon as practicable but in no event later than five years after the date of enactment. Under the "as soon as practicable" standard, a commuter authority, to the extent that its accessible rolling stock is limited, shall have discretion to determine where and how such rolling stock is to be deployed, taking into account

differing ridership levels on its respective routes, in the course of achieving full compliance with this subsection by the end of the five-year period.

Paragraph (2)(A) sets forth a general rule with respect to the purchase of new passenger cars for use in commuter rail transportation. The paragraph states that it shall be considered discrimination for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed in regulations issued by the Secretary under section 225.

Paragraph (2)(B) provides that for purposes of this part and section 504 of the Rehabilitation Act of 1973, the requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require any of the following:

—a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;
—space to fold and store a wheelchair; or
—a seat to which a passenger who uses a wheelchair can transfer.

In all other aspects, the Committee intends that the accessibility features with respect to wheelchairs found in current Federal Railroad Administration regulations at 49 C.F.R. 27.73(b)(2) should apply. The Committee's comments above with respect to the question of whether this Act permits regulations to mandate the widening of aisles and passageways on Amtrak trains apply with equal force here as well.

Used Rail Cars

Subsection (c) sets forth the requirements applicable to the purchase or lease of used rail passenger cars for use in intercity or commuter rail transportation. Under this provision, it shall be considered discrimination for a person to purchase or lease a used rail passenger car for such use unless that person makes demonstrated good faith efforts to purchase or lease one that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary in regulations issued under section 225.

Remanufactured Rail Cars

Subsection (d) sets forth the requirements applicable to the remanufacturing of rail passenger cars, and the purchase or lease of such cars, for use in intercity or commuter rail transportation. Under this provision, it shall be considered discrimination for a person to remanufacture a rail passenger car for such use so as to extend its usable life for 10 years or more unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary in regulations issued under section 225. Similarly, it shall be considered discrimination

for a person to purchase or lease a remanufactured rail car for such use unless the car was remanufactured as required above.

The phrase "to the maximum extent feasible" is included to make clear that the Committee does not intend to require accessibility for a remanufactured vehicle if it would destroy the structural integrity of the vehicle.

Stations

Subsection (e) sets forth the requirements applicable to stations in the Amtrak system and in commuter rail systems, respectively. The provision covers both new stations and existing stations.

Under paragraph (1) it shall be considered discrimination for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed in regulations issued by the Secretary under section 225.

The requirements applicable under paragraph (2)(A) to existing stations differ in part as between Amtrak and the commuter railroad. Amtrak is required to make *all* stations in its systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 20 years after the date of enactment. The Committee recognizes that Amtrak's funds for station modernization and rehabilitation have been and are likely to remain limited. The Committee further recognizes that the effect of these limitations will be exacerbated by the expense of complying with the requirements of this legislation. It is the hope and expectation of the Committee that those inside and outside government who have lent their support to the ADA will give that support meaning and content by also endorsing and working for additional funds for Amtrak to use in meeting the ADA's requirements.

In recent years, Amtrak has been able to increase the effectiveness of its funds by arranging for partnerships with State and local entities that agree to assume or defray the expenses of station construction and rehabilitation. The Committee wishes to encourage the continuation and expansion of this highly successful and innovative procedure. Especially in the case of smaller stations where the revenue contribution to a particular Amtrak service route may be quite small, support of station construction and modification through State and local funding sources may well mean the difference between closure of a station or continued rail passenger service for a particular community. The Committee expects, however, that with respect to existing stations, Amtrak will give the mandated modifications sufficient funding priority to prevent closures except as a last resort.

In the same vein, the Committee notes that the FRA's budget submission to the congressional Appropriations Committees for fiscal year 1991 provide for the elimination of funds "for Amtrak to research and improve elderly and disabled access between rail passenger cars and station platforms." In fiscal year 1990, $392,000 was appropriated for this purpose. With the passage of the ADA, the Committee questions whether this is an appropriate time to

make the cut recommended by FRA and strongly recommends that resources in this area be ehhanced, not reduced.

Commuter railroads are required only to make *key* stations in their systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. These stations must be made accessible and usable as soon as practicable but in no event later than three years after the date of enactment. Commuter railroads may seek an extension of up to 20 years from the Secretary under this provision in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

The Committee viewed it as important to provide commuter authorities with statutory guidance to aid them in the task of designating key stations, as well as to mandate in the statute a process for doing so. Thus, the bill requires each commuter authority to designate the key stations in its system, in consultation with individuals with disabilities and organizations representing such individuals, taking into account such factors as high ridership and whether such station serves as a transfer or feeder station. In addition, before the final designation of key stations under the bill, the commuter authority is required to conduct a public hearing. The bill does not mandate adherence to a particular public hearing procedure. However, the Committee expects that such hearings will include a fair opportunity to be heard from, at a minimum representatives of the local disabilities community and of such organizations, local governments, business interests, and commuters that have a direct interest in the proposed designation.

The Secretary is directed under this paragraph to require the appropriate person to develop a plan for executing the provisions set forth above with respect to existing stations. The plan should reflect consultation with individuals with disabilities affected by it and establish milestones for the achievement of the requirements of this provision.

The Committee does not intend this legislation to upset in any manner the settlement agreements recently reached by commuter authorities in New York and Philadelphia with respect to key stations.

Paragraph (2)(B) addresses the manner in which alterations to existing stations are made. As a general rule, it shall be considered discrimination for a responsible person, owner, or person in control of an Amtrak or commuter station to fail to make alterations that affect or could affect the usability of the station or a part thereof in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations. In addition, where alterations are made that affect or could affect the usability of or access to an area of the station containing a primary function, it shall be considered discrimination for the responsible person, owner, or person in control to fail to make such alterations in a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and

usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

As alluded to above, the ownership, leasing, control, and occupancy arrangements governing passenger railroad stations differ markedly from case to case. Accordingly, the Committee believed it important to ensure that a responsible person under the legislation would have the ability to make existing stations accessible under paragraph (2)(A) and to make alterations as required by paragraph (2)(B) even where that person was not also the owner or person in control of the station. Thus, paragraph (2)(C) provides that it shall be considered discrimination in these cases for such an owner or person in control to fail to provide reasonable cooperation to a responsible person in that responsible person's efforts to comply with the requirements of this paragraph with respect to such station. For example, an owner or person in control would be prohibited under this provision from requiring an unreasonable insurance bond from the responsible person as a condition of performing the work.

While the failure to receive reasonable cooperation required by this provision would not be a defense to a claim of discrimination under the ADA, the bill provides a cause of action to the responsible person to redress such failure against the owner or person in control. Thus, for example, an owner or person in control may be liable to a responsible person for damages caused by a construction delay engendered by the failure to provide reasonable cooperation or may be required to idenfity the responsible person for damages recovered by a disabled plaintiff. Alternatively, a responsible person may obtain an injunction requiring the owner or person in control to provide the necessary cooperation in order to carry out the requirements of this paragraph.

No paratransit obligation imposed

The bill imposes no requirement that Amtrak or commuter railroads provide paratransit or other special transportation services of the nature described in section 211(c). Nor should the bill be read to imply any obligation on Amtrak or commuter railroads to provide paratransit or other special transportation services merely because Amtrak or any commuter railroads are associated with a person who is subject to the requirements of section 211(c). The Committee specifically rejects any notion that Amtrak or commuter railroads should be required to provide paratransit or other special transportation services. This issue was discussed at the hearing on H.R. 2273 and S. 933 held by the Subcommittee on Transportation and Hazardous Materials. Witnesses uniformly indicated that there was no intention to impose paratransit or other special transportation service obligations upon either Amtrak or any commuter railroad under the legislation. See *Americans with Disabilities Act: Hearings on H.R. 2273 and S. 933,* Serial No. 101-95 at pp. 123-24, 150 (September 28, 1989). To the extent that Amtrak or a commuter authority provides transportation other than intercity or com-

muter rail transportation as defined in section 221, this part does not address paratransit or other special transportation service obligations that may be applicable to such other forms of transportation.

SECTION 223. CONFORMANCE OF ACCESSIBILITY STANDARDS

This section directs that accessibility standards included in regulations issued under this part be consistent with the minimum guidelines issued by the ATBCB under section 504(a) of the ADA.

SECTION 224. INTERIM ACCESSIBILITY REQUIREMENTS

This section addresses the issue of compliance with the requirements of section 222 during the period prior to the effective date of final regulations issued under this part with respect to the accessiblity of stations and rail passenger cars.

Subsection (a) provides that, if final regulations have not been issued pursuant to section 225, for new construction or alterations for which a valid and appropriate State of local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards (UFAS) in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 222(e). However, if such final regulations have not been issued one year after the ATBCB has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

Subsection (b) provides that a person shall be considered to have complied with the accessibility and usability requirements of section 222 (a) through (d) if the design for a rail passenger car complies with the laws, regulations (including MGRAD and such supplemental minimum guidelines as are issued under section 504(a) of the ADA), and any standard for accessibility issued under the Architectural Barriers Act of 1968 governing accessibility of such cars, to the extent that such laws, regulations, guidelines, and standards are not inconsistent with this part and are in effect at the time such design is substantially completed. Reference to the UFAS is omitted in this subsection because the UFAS does not and is not contemplated to contain standards applicable to rail passenger cars.

SECTION 225. REGULATIONS

This section requires the Secretary, within one year after the date of enactment, to issue regulations in an accessible format necessary for carrying out this part. The Committee expects the Secretary to delegate the task of drafting and issuing regulations with respect to commuter railroads to the Federal Railroad Administration, which has the background and expertise necessary to coordi-

nate these regulations with existing railroad safety laws, to which the commuter railroads are subject.

SECTION 226. ENFORCEMENT

This section provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be available to individuals alleging discrimination on the basis of disability in violation of this part.

SECTION 227. EFFECTIVE DATE

Under this section, part II of subtitle B of this title shall become effective 18 months after the date of enactment, except for sections 222 and 225, which shall become effective on the date of enactment.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SECTION 301. DEFINITIONS

This section sets forth the definitions of key terms used in this title.

Paragraph (1) defines the term "commerce" to mean travel, trade, traffic, commerce, transportation, or communication (A) among the several States; (B) between any foreign country or any territory or possession and any State; or (C) between points in the same State but through another State or foreign country.

Paragraph (2) defines the term "commercial facilities" to mean facilities (A) that are intended for nonresidential use, and (B) whose operations will affect commerce. Excluded from the term are railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 222 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

Paragraph (3) defines the term "public accommodations". Under the definition, the following entities are considered public accommodations if they are privately operated and their operations affect commerce:

(A) an inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, or lecture hall;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(F) a laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional

office of a health care provider, hospital, or other similar service establishment;

(G) a terminal used for public transportation;

(H) a museum, library, gallery, and other similar place of public display or collection;

(I) a park of zoo;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(L) a gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

The twelve categories of entities included in the definition of the term "public accommodation" are intended to be exhaustive.

Paragraph (4) defines the term "public transportation" to mean transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis, but does not include commuter rail transportation or intercity rail transportation as such terms are defined in section 221 (2) and (3).

Paragraph (5) defines the terms "rail" and "railroad" to have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970.

Paragraph (6) defines the term "readily achievable" to mean easily accomplishable and able to be carried out without such difficulty or expense. In determining whether an action (such as removal of a barrier) is readily achievable, factors specified for consideration under the definition include (A) the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities, the overall financial resources of the entity and the financial resources of its facility or facilities involved in the removal of the barrier; (B) the type of operation or operations maintained by a covered entity, including the composition and structure of the workforce, in terms of such factors as functions of the workforce, geographic separateness, and administrative relationship to the extent that such factors contribute to a reasonable determination of whether the action is readily achievable; and (C) the nature and cost of the action needed.

It is important to note that "readily achievable" is a significantly lesser or lower standard than the "undue burden" standard used in this title and the "undue hardship" standard used in title I. Actions that are not easily accomplishable or able to be carried out without much difficulty or expense are not required under the "readily achievable" standard, even if they do not impose an undue burden or hardship. The term focuses on achievability from the perspective of the business operator and addresses the degree of ease or difficulty that the business operator would experience in removing a barrier or making goods, services, facilities, and so forth available through alternative methods; if these actions cannot be accomplished easily and without much difficulty or expense, then they are not required. What the standard will mean in practice will depend on the particular circumstances of each public accom-

modation, considering the factors listed previously, but insofar as it addresses the removal of barriers, the standard only requires physical access that can be achieved without extensive restructuring or burdensome expense. It allows for minimal investment with a potential return of profit from use by disable patrons, often more than justfying the small expense.

SECTION 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS

Subsection (a) provides a general rule prohibiting discrimination against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. The phrase "full and equal enjoyment" does not require that individuals with disabilities must attain the identical result of level of achievement as nondisabled persons, but does mean that individuals with disabilities must be afforded an equal opportunity to attain substantially the same result.

Subsection (b) provides principles of construction for the general rule, divided between general prohibitions against discrimination set forth in paragraph (1) and specific prohibitions set forth in paragraph (2). Under the general prohibitions of paragraph (1), the bill provides that it shall be discriminatory for any person, directly or through contractual, licensing, or other arrangements to:

—subject an individual or class of individuals on the basis of a disability or disabilities to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity;

—afford an individual or class of individuals on the basis of a disability or disabilities with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded other individuals; or

—provide an individual or class of individuals on the basis of a disability or disabilities with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class with a good, service, facility, privilege, advantage, or accommodation or other opportunity that is an effective as that provided to others.

The term "individual or class of individuals" in the preceding discussion refers to the clients or customers of the covered public accommodation that enters into the described contractual, licensing, or other arrangement.

The general prohibitions of paragraph (1) also include the following requirements:

—Goods, services, facilities, privileges, advantages, and accommodation shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

—An individual with a disability shall not be denied the opportunity to participate in programs or activities that are not sepa-

rate from or different than those provided to others, even if those separate or different programs or activities are provided in accordance with this section.

—An individual or entity shall not, directly or through contractual or other arrangement, utilize standards, criteria, or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control.

—No individual or entity shall be excluded or otherwise denied equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities because of the known disability of another individual with whom the first individual or entity is known to have a relationship or association.

Subsection (b)(2) goes on to set forth the bill's specific prohibitions against discrimination in public accommodations. Subsection (b)(2)(A) provides that the term "discrimination", as used in subsection (a), shall include the impositon or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individual with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

The statutory requirement that a person with a disability must be able to meet the "necessary eligibility criteria" of a public accommodation reflects the longstanding principle under section 504 of the Rehabilitation Act that, to the extent the manifestations of a person's disability prevent that person from meeting the basic eligibility requirements of a public accommodation—for example, by causing substantial interference with the operation of the public accommodation—that manifestation of the person's disability may be taken into account by the operator of the public accommodation in denying services to the person with the disability. Of course, the prejudice or stereotypical views of other individuals cannot be used as the basis for claiming a substantial interference with the operation of a public accommodation. Consistent with current law, the assessment as to whether an individual with a disability meets the necessary eligibility criteria of a public accommodation must take into account whether a reasonable modification to rules, policies, and procedures, or the provision of auxiliary aids or services, would enable the person to meet the necessary eligibility criteria.

Under the specific prohibitions of paragraph (2), the following omissions would constitute discrimination for purposes of subsection (a):

—a failure to make reasonable modifications in policies, practices, and procedures when such modifications are necessary to afford to individuals with disabilities the goods, services, facilities, privileges, advantages, or accommodations being offered, unless the entity can demonstrate that making such modification would fundamentally alter nature of such goods, services, facilities, privileges, advantages, or accommodations;

—a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals

because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in undue burden;

—a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable;

—where an entity can demonstrate that the removal of a barrier under the preceding requirement is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

Finally, paragraph (2) provides that with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, the term "discrimination" under subsection (a) includes a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and unsable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations. Where the entity is undertaking an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General). Under the bill, this provision is not to be construed to require the installation of an elevator for facilities that are less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SECTION 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES

Subsection (a) sets forth a general rule with respect to the design and construction of new public accommodations and commercial facilities. Except as provided in subsection (b), it shall be considered discrimination under this provision to fail to design and construct such accommodations and facilities for first occupancy later than

30 months after the date of enactment that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the standards set forth or incorporated by reference in regulations issued under this title.

Subsection (b) provides that the installation of an elevator is not required under subsection (a) for public accommodations and commercial facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

The inclusion in this title of provisions applicable to commercial facilities is not intended to subject such facilities to the requirements of section 302 applicable to public accommodations if those facilities would not otherwise qualify as public accommodations under section 301(3).

SECTION 304. PROHIBITION OF DISCRIMINATION IN PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES

Subsection (a) sets forth a general rule providing that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

Subsection (b) provides principles of construction for subsection (a) by setting forth several specific acts and omissions constituting discrimination. These acts include the imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered.

The statutory requirement that a person with a disability must be able to meet the "necessary eligibility criteria" of an entity providing public transportation services reflects the longstanding principle under section 504 of the Rehabilitation Act that, to the extent the manifestations of a person's disability prevent that person from meeting the basic eligibility requirements of a public transportation service—for example, by causing substantial interference with the operation of the public transportation service—that manifestation of the person's disability may be taken into account by the public transportation operator in denying service to the person with the disability. Of course, the prejudice or stereotypical views of other individuals cannot be used as the basis for claiming a substantial interference with the operation of a public transportation service. Consistent with current law, the assessment as to whether an individual with a disability meets the necessary eligibility criteria of a public transportation service must take into account whether a reasonable modification to rules, policies, and proce-

dures, or the provision of auxiliary aids or services, would enable the person to meet the necessary eligibility criteria.

Other acts and omissions described in subsection (b) that would constitute discrimination under subsection (a) are:

—the failure of an entity to make reasonable modifications, provide auxiliary aids and services, or remove barriers consistent with the requirements of section 302(b)(2) (B), (C), (D), and (E);

—the purchase or lease of a new rail passenger car that is used to provide public transportation services, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

—the remanufacture of a rail passenger car that is used to provide public transportation so as to extend its usable life for 10 years or more, or the purchase or lease of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

For purposes of this section, the concepts of accessibility and usability in the context of the phrase "readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs" has the same meaning as described under section 222. Similarly, as with comparable provisions and requirements applicable to Amtrak and commuter railroads under section 222, this section does not *require* the provision of lifts, ramps, or other equipment in any *particular* circumstance with respect to public transportation by rail when provided by private entities. Moreover, where the provision of such a device would not be readily achievable, the private entity to provide it.

Subsection (c) provides an exception to the requirements of subsection (b) for historical or antiquated rail passenger cars with respect to remanufacture and the removal of barriers. Under subsection (c), to the extent that compliance with those requirements of subsection (b) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required. As used in this subsection, the term "historical or antiquated rail passenger cars" is defined to mean rail passenger cars:

—which are not less than 30 years old at the time of their use for transporting individuals;

—the manufacturer of which is no longer is the business of manufacturing rail passenger cars; and

—which either (i) has a consequential association with events or persons significant to the past, or (ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

The Committee recognizes that historical or antiquated rail passenger cars used in public transportation service present a unique situation with respect to accessibility. Such cars, which embody the

distinctive characteristics of a type of rail car used in the past or which represent a particular historical era, play an important role in preserving the heritage of the United States. The cars represent "living history," a look back at the building and expansion of our country. Unfortunately, some of the alterations that would be necessary to make these rail passenger cars accessible to disabled individuals, particularly those who use wheelchairs, would undermine the historical or antiquated nature of such cars. Additionally, structural modifications necessary to accommodate individuals with certain disabilities may result in changes to the car that prevent it from meeting Federal Railroad Administration (FRA) safety and mechanical standards.

In analyzing these problems, the Committee struck an equitable balance between, on the one hand, the requirements of the legislation to ensure that public transportation in general be readily accessible to disabled individuals and, on the other hand, the need and desire to preserve the heritage embodied in these cars. This balance was achieved by providing an exception to the requirements of the legislation for historical and antiquated rail passenger cars to the extent that compliance with the legislation would significantly alter the historical or antiquated characteristics of such cars. Additionally, an exception is provided if alterations to the car could be made in such a way as not to significantly alter the historical or antiquated characteristics but would result in a violation of any rules, regulations, standards, or orders issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970. However, whenever possible without significantly altering the historical or antiquated characteristics, such cars should be made accessible to individuals with disabilities, and operators of such cars should attempt to accommodate such individuals.

The Committee has included a definition for "historical or antiquated rail passenger cars". The Committee believes that the cars meeting the requirements of this definition are generally used for educational purposes, as tourist attractions, for excursions, or on a charter basis. Under the definition, a car does not suddenly become "historical or antiquated" merely because, for example, one furnishes it with a piece of antique furniture or hangs an antique fixture in an otherwise unremarkable setting. The passengers riding on these cars are generally attracted to such transportation, as opposed to other modes of transportation, for the ambience and experience provided by the historical or antiquated characteristics of the cars. These are the type of rail passenger cars that are intended to fall within the exception to the legislation. The Committee notes, however, that a car does not lose its protected status under this provision merely as a result of the presence of amenities that make the car attractive to or comfortable for these very riders. Thus, for example, the installation of kitchens meeting FRA and OSHA safety standards, or the presence of air conditioning and modern plumbing, would not prevent a car from qualifying for the exception if these amenities do not detract from the overall historical or antiquated character of the car.

SECTION 305. REGULATIONS

Subsection (a) provides that not later than one year after the date of enactment, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out section 304 that shall include standards applicable to rail facilities and rail passenger cars covered under such section.

Subsection (b) provides that not later than one year after the date of enactment, the Attorney General shall issue regulations, in an accessible format, to carry out the remaining provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

Subsection (c) provides that standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines issued by the ATBCB in accordance with section 504(a) of the ADA.

Subsection (d) provides that, if final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the UFAS in effect at the time the building permit is issued shall suffice to satisfy the requirement that buildings and facilities be readily accessible to and usable by persons with disabilities as required under sections 302(b)(2)(F) and 303. However, if such final regulations have not been issued one year after the ATBCB has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that buildings, facilities, vehicles, and rail passenger cars be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

The reference to vehicles and rail passenger cars is excluded from the first portion of the subsection, covering the period prior to ATBCB's issuance of supplemental minimum guidelines, because the UFAS does not and is not contemplated to contain standards applicable to vehicles and rail passenger cars. Accordingly, reference to vehicles and rail passenger cars in that portion would be inappropriate.

SECTION 306. ENFORCEMENT

Subsection (a) sets forth, in general, the availability of remedies and procedures to redress violations of this title. The subsection provides in paragraph (1) that the remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) shall be available to any individual who has reasonable grounds for believing that he or she is being or is about to be subjected to discrimination on the basis of disability in violation of this title.

The subsection further provides in paragraph (2) that in the case of violations of section 302(b)(2) (D) and (F) and section 303(a), injunctive relief shall include an order to alter facilities to make

such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title. While the issuance of an order to make a facility readily accessible to and usable by individuals with disabilities is mandatory under the first sentence of paragraph (2), the Committee does not intend by this provision to deprive the court of all equitable discretion in such matters. Thus, in framing the terms of a mandatory injunction, such as the period for compliance, the court may take into account the particular facts and circumstances of each case.

Subsection (b) sets forth the authorities and responsibilities of the Attorney General in enforcing the provisions of this title. Under subsection (b)(1)(A), the Attorney General is required to investigate alleged violations of this title and to undertake periodic reviews of the compliance of covered entities under this title. If the Attorney General has reasonable cause to believe that (i) any person or group of persons is engaged in a pattern or practice of discrimination under this title, or (ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance, then the Attorney General may commence a civil action under subsection (b)(1)(B) in any appropriate Federal district court.

Under subsection (b)(1)(A), the Attorney General is further authorized, on the application of a State or local government and in consultation with the ATBCB, and after prior notice and a public hearing, to certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

Subsection (b)(2) provides that in a civil action brought by the Attorney General, the court may grant any one or more of several remedies specified in the legislation—equitable relief, monetary damages, and civil penalties. However, the court is not authorized under this provision to award punitive damages. Furthermore, the purpose of civil penalties is stated to be the vindication of the public interest, and those penalties are limited to a maximum of $50,000 for a first violation and $100,000 for any subsequent violation.

For purposes of determining whether a first or subsequent violation has occurred under the civil penalty provision, subsection (b)(3) provides that a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

Finally, subsection (b)(4) provides that in a civil action brought by the Attorney General under subsection (b)(1)(B), the court, when considering what amount of civil penalty, if any, is appropriate to assess, shall give consideration to any good faith effort or attempt to comply with this Act by the defendant. In evaluating good faith, the court shall consider, among other factors, whether the defen-

dent could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SECTION 307. EFFECTIVE DATE

This section provides that this title, with the exception of sections 304(b)(3) and 305, shall become effective 18 months after the date of enactment. Sections 304(b)(3) and 305, however, shall become effective on the date of enactment.

TITLE IV—TELECOMMUNICATIONS

SECTION 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS

This section amends Title II of the Communications Act of 1934 by adding a new section 225. The new section is described in detail below:

Definitions

Section 225(a) defines: (1) "common carrier" or "carrier" to include both interestate common carriers and intrastate common carriers for purposes of this section only; (2) "TDD" to mean a machine that employs graphic communications in the transmission of coded signals through a telephone wire or radio communication system; and (3) "telecommunications relay services" to mean telephone transmission services that allow a hearing-impaired or speech-impaired individual to communicate in a manner that is functionally equivalent to voice communications services offered to hearing individuals. The term includes, but is not limited to, TDD relay services.

Availability to telecommunications relay services

Section 225(b)(1) states that to promote the availability and use of communications services to all Americans, the Commission must ensure that interstate and intrastate telecommunications relay services are provided to the greatest extent possible and in the most efficient manner.

Section 225(b)(2) extends to the Federal Communications Commission the same authority, power, and functions (including remedies, procedures, rights, penalties, and obligations) with respect to intrastate carriers as it has with respect to interstate carriers under the Communications Act of 1934, as amended, for the limited purposes of implementing and enforcing the requirements of this section.

Provision of services

Section 225(c) requires that carriers providing telephone voice transmission services provide telecommunications relay services within three years after the date of enactment of this section in the area in which it offers service. Carriers are to offer to hearing-impaired and speech-impaired individuals services which are functionally equivalent to voice telephone services provided to non-impaired individuals. Carriers are granted the flexibility to provide

such services individually, through designees, through a competitively selected vendor, or in concert with other carriers. In exercising this flexibility, it is the carriers' responsibility to ensure compliance with all the requirements of the section. A carrier will be in compliance with the regulations of this section with regard to the provision of intrastate relay service if the carrier complies with the requirements of a state certified program under subsection (f) or, in those states that do not have a certified program, complies with the Commission's regulations under subsection (d).

If an entity other than a carrier is providing the service, it remains the carrier's responsibility to ensure that all applicable regulations are being complied with.

There are some services, such as audiotext services, that connect callers to recorded information services. It is not the function of this legislation to facilitate access to these kinds of services. Rather, the legislation is intended to extend the benefits of voice telephone service to hearing- and speech-impaired individuals.

In carrying out their responsibilities under this Act, common carriers are encouraged to accommodate individuals who speak a language other than English. This is particularly important in areas in which there is a substantial population of individuals for whom English is not the primary language. However, carriers are not required to provide relay services in languages other than those which predominate among large sections of the population.

Regulations

Section 225(d)(1) requires the Commission to prescribe the necessary rules and regulations to carry out the requirements of this section within one year of enactment. The Commission's regulations must establish functional requirements, guidelines, operational procedures, and minimum standards for the provision of telecommunications relay services. The regulations must ensure that the telecommunications relay services are available every day for 24 hours on a non-discriminatory basis. The users of the telecommunications relay services are to be charged rates no greater than the rates charged for functionally equivalent voice communications services.

Consistent with their common carrier obligations, the common carriers' relay operators must not refuse calls, nor limit the length of calls to users of the telecommunications relay services. The legislation also prohibits the relay operators from disclosing the content of any relayed conversation. Any record of a conversation shall not be kept any longer than the duration of the call; however, records of the transaction may be kept for billing purposes.

Section 225(d)(2) requires that the Commission ensure that regulations prescribed to implement this section are consistent with section 7 of the Communications Act, while allowing for the use of existing technology. Such regulations should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.

There are two formats currently being utilized by TDD users—ASCII and Baudot. In a Notice of Proposed Rulemaking (Docket 87-124, adopted Juy 21, 1989), the Commission last year stated "that requiring all TDDs to use the ASCII format would impose un-

necessary burden on owners of the Baudot devices." In implementing this section, the Commission should continue its policy of accommodating both existing formats, so that TDD users will not be required to purchase new equipment to continue to receive service.

Section 225(d)(3)(A) requires that the Commission prescribe regulations, consistent with section 410 of the Communications Act, governing the jurisdictional separation of costs for telecommunications relay services provided under this section.

Section 225(d)(3)(B) states that the Commission shall issue regulations to ensure that carriers are permitted to recover the costs incurred in meeting the requirements of this Act from subscribers of the respective interstate and intrastate jurisdictions. The Commission's regulations shall ensure that all subscribers to every interstate service, including private line, public switched network services, and other common carrier services, contribute to recover the costs incurred in the provision of interstate relay services.

The Commission also is granted broad discretion to structure a cost-recovery mechanism to determine the most appropriate method of recovery of interstate costs. While "Lifeline" services are not exempted specifically from this section, requiring "Lifeline" subscribers to pay for relay services would tend to undermine the rationale for such services. Exempting "Lifeline" services would not be inconsistent with this provision.

The Committee amendment struck the prohibition on end-user charges that was contained in the introduced legislation. It is the Committee's intent that the Commission have broad discretion in promulgating rules under this Act to determine the most appropriate method to ensure the recovery of interstate and intrastate costs.

The Act requires that state commissions permit common carriers to recover the costs incurred in providing intrastate telecommunications relay services, if the common carrier meets the requirements of the state's certified program. In states without a certified program, the Act requires state commissions to permit the recovery of costs as long as the carrier complies with the federal regulatory requirements established by the commission.

Enforcement

Section 225(e)(1) requires that the commission enforce the requirements of this section subject to subsections (f) and (g). The Committee intends that the commission have sufficient enforcement authority to ensure that telecommunications relay services are provided nationwide and that certain minimum federal standards are met by all providers of the services. The Commission's enforcement authority over the provision of intrastate telecommunications relay services is limited in states with certified programs by certification procedures required to be established under subsection (f).

Section 225(e)(2) requires that the Commission resolve any complaint by final order within 180 days after that complaint has been filed.

Certification

Section 225(f)(1) and (f)(2) describe the state certification procedure whereby states may apply to assert jurisdiction over the provision of intrastate telecommunications relay services. The Commission may grant certification upon a showing that such services are being made available in the state and that they comply with the federal guidelines and standards promulgated pursuant to subsection (d). A state plan may make service available through the state government itself, through designees, through a competitively selected vendor, or through regulation of intrastate carriers.

Any state wishing to obtain certification must include in its submission to the Commission documentation on the procedures and remedies for enforcing compliance with the state's requirements. This is necessary because states with certified plans will have the primary role in enforcing the provisions of the Title IV in those states.

Section 225(f)(3) states that, except for reasons affecting rules promulgated pursuant to subsection (d), the Commission may not deny certification to a state based solely on its chosen method of founding the provision of intrastate telecommunications relay services. Subsection (d), however, would require that a state program not include cost recovery mechanisms that would have the effect of requiring users of telecommunications relay services to pay effectively higher rates than those paid for functionally equivalent voice communications services.

In addition, the Committee recognizes that the relay services are of benefit to all society and therefore would expect that any funding mechanism not be labled so as to prejudice or offend the public, especially the hearing-impaired and speech-impaired community. For example, California's relay service is funded by a surcharge that appears on telephone bills as "Deaf Trust Fund." This unfortunate choice of words is offensive and should be precluded.

Section 225(f)(4) allows for the Commission to revoke such certification if, after notice and opportunity for a hearing, the Commission determines that certification is no longer warranted. In a state whose program has been suspended, the Commission shall provide a reasonable transition period to ensure both continuity of relay service for users and to provide a reasonable opportunity for common carriers to meet the requirements of the Commission's regulations after the suspension or revocations of the certified program.

Complaint

Section 225(g)(1) states that when a complaint is filed with the Commission that alleges a violation of this section with respect to the provision of intrastate to telecommunications relay services, the Commission shall refer such complaint to the appropriate state commission is that state has been duly certified by the Commission pursuant to subsection (f). If the appropriate state has not been duly certified, then the Commission will handle the complaint pursuant to subsection (e)(1) and (e)(2)

Once a complaint has been properly referred to a state commission, subsection (g)(2) permits the Commission to exercise its juris-

diction over such a complaint only if final action has not been taken within 180 days after the complaint is filed with the state, or within a shorter period as prescribed by the regulations of such state, or if the Commission determines that a state program no longer qualifies for certification under subsection (f).

SECTION 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS

This section amends section 711 of the communications Act of 1934 to require that any public service announcement, either partially or wholly funded by the Federal government, shall include closed captioning of the verbal content of the announcement.

The section further states that a television broadcast licensee shall not be required to supply closed captioning for any such announcement that does not include closed captioning. Unless the licensee intentionally fails to transmit the closed caption that was included in the announcement, the licensee shall not be held liable for broadcasting any such announcement without transmitting a closed caption.

TITLE V—MISCELLANEOUS PROVISIONS

SECTION 501. CONSTRUCTION

Subsection (a) states that, except as otherwise provided in this Act, nothing in this Act shall be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued by Federal agencies pursuant to such title. The phrase "except as otherwise provided in this Act" has been included because the legislation, as reported, makes several changes in existing law, particularly with respect to requirements imposed on Amtrak and commuter railroads. The Committee intends that the provisions of the ADA in these areas shall supersede any provisions of title V of the Rehabilitation Act providing a broader scope of coverage or higher standards.

Subsection (b) provides that nothing in this Act shall be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protecton for the rights of individuals with disabilities than are afforded by this Act. The Committee notes that while nothing in *this Act* shall be construed to have this effect, the Act is not intended to override traditional constitutional prohibitions against the burdening of or interference with the free flow of interstate commerce, particularly with respect to the interstate operation of railroads. Amtrak, for example, operates in 44 States and the District of Columbia. The Committee does not expect Amtrak to have to comply with the multiple requirements and standards that might be imposed by various jurisdictions with respect to the accessibility of its cars, stations, and other facilities and services. The same is true with respect to commuter railroads operating in more than one State. In this respect, the ADA defines the scope of these railroads' obligations.

Subsection (b) further provides that nothing in this Act shall be construed to preclude the prohibition of, or the imposition of re-

strictions on, smoking in places of public accommodation, in places of employment, in public transportation as defined in section 211(a)(1) and 301(4), in commuter rail transportation as defined in section 221(2), or in intercity rail transportation as defined in section 221(3).

Subsection (c) provides that titles I through IV and this Act shall not be construed to prohibit or restrict:

—an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

—a person or organization covered by this Act from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

—a person or organization covered by this Act from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

The subsection further provides, however, that the activities described above with respect to risks and benefit plans are not to be used as a subterfuge to evade the purposes of titles I and III.

SECTION 502. PROHIBITION AGAINST RETALIATION AND COERCION

Subsection (a) prohibits discrimination against any individual because that individual has lawfully opposed any act or practice made unlawful by this Act or because that individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

Subsection (b) provides that it shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Act.

Subsection (c) provides that the remedies and procedures available under sections 105, 204, 213, 226, and 306 of this Act shall be available to persons aggrieved by violations of subsections (a) and (b) with respect to title I, subtitle A of title II, parts I and II of subtitle B of title II, and title III, respectively.

SECTION 503. STATE IMMUNITY

Consistent with the requirements set forth in *Atascadero State Hospital v. Scanlon,* 473 U.S. 234 (1985), this section specifies that a State shall not be immune under the 11th Amendment from an action in Federal court for a violation of this Act. The section further provides that in any such action, remedies are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SECTION 504. REGULATIONS ISSUED BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Subsection (a) provides that not later than 9 months after the date of enactment, the ATBCB shall issue minimum guidelines supplementing the existing MGRAD for purposes of titles II and III of this Act.

Subsection (b) requires that the supplemental guidelines issued under subsection (a) establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

Subsection (c) sets forth special provisions for qualified historic properties. Under these provisions, the supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the UFAS. With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines shall, at a minimum, maintain the procedures and requirements established in 4.1.7 (1) and (2) of the UFAS. With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines shall establish procedures equivalent to those established by 4.1.7(1) (b) and (c) of the UFAS, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SECTION 505. ATTORNEYS' FEES

This section provides that in any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses and costs. Under this provision, the United States shall be liable for the foregoing the same as a private individual.

SECTION 506. TECHNICAL ASSISTANCE

Subsection (a) requires the Attorney General, within 180 days after the date of enactment and in consultation with the Chairman of the EEOC, the Secretary of Transporation, the Chairperson of the ATBCB, and the Chairman of the FCC, to develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under the Act. The plan is to be published for public comment in accordance with the Administrative Procedure Act.

Subsection (b) authorizes the Attorney General, in carrying out subsection (a), to obtain the assistance of other Federal agencies, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

Subsection (c) authorizes each Federal agency that has responsibility for implementing this Act to render technical assistance to individuals and institutions that have rights or duties under the re-

spective title or titles for which such agency has responsibility. The subsection divides the responsibility for implementation of the plan for assistance under subsection (a) as follows:

—For title I, the EEOC and the Attorney General;
—For subtitle A of title II, the Attorney General;
—For subtitle B of title II, the Secretary of Transportation;
—For title III (except for section 304), the Attorney General, in coordination with the Secretary of Transportation and the Chairperson of the ATBCB;
—For section 304, the Secretary of Transportation; and
—For title IV, the Chairman of the FCC.

Each Federal agency that has responsibility for implementing this Act is further required by subsection (c) to ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights and duties under the Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

Subsection (d) authorizes each Federal agency referred to above to make grants and enter into contracts to effectuate the purposes of this Act. Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by the Act and to provide information and technical assistance about techniques for effective compliance with the Act.

Subsection (e) provides that an employer, public accommodation, or other entity covered under the Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

SECTION 507. ILLEGAL USE OF DRUGS

Subsection (a) specifies that, for purposes of this Act, except as provided in subsection (c), the current illegal use of a drug does not constitute a disability.

Subsection (b) provides that, for purposes of this section, an individual shall not be considered a current illegal user of a drug if such individual:

—has successfully completed a supervised drug rehabilitation program and is no longer illegally using drugs, or has otherwise been rehabilitated successfully and is no longer illegally using drugs;
—is participating in a supervised drug rehabilitation program and is no longer illegally using drugs; or
—is erroneously regarded as being an illegal user of drugs but is not illegally using drugs.

Subsection (b) further provides that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures designed to ensure that an individual who has successfully completed or is participating in a supervised drug rehabilitation program, as described above, is no longer illegally using drugs. The Committee notes that the term "supervised drug rehabilitation program" is not defined in the Act and that there

are no standards currently in place to determine whether a given program qualifies under this section. The Committee intends that the term be interpreted to include both in-patient and outpatient programs, as well as employee assistance programs that provide professional (not necessarily medical) assistance and counseling.

Subsection (c) provides that notwithstanding subsection (a) and section 508(b)(3) of the Act, an individual shall not be denied health or social services on the basis of the current illegal use of drugs if such individual is otherwise entitled to such services.

Subsection (d) provides that nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of drug testing.

Under subsection (e) the term "drug" is defined to mean a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812). The subsection also provides that the term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

SECTION 508. DEFINITIONS

Subsection (a) provides that for purposes of the definition of the term "disability" in section 3(2), homosexuality and bisexuality shall not be considered impairments.

Subsection (b) provides that under this Act, the term "disability" shall not include:

—transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
—compulsive gambling, kleptomania, or pyromania; or
—psychoactive substance use disorders resulting from current use of illegal drugs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 2273 as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

* * * * * * *

APPLICATION OF ACT

SEC. 2. (a) * * *

(b) Except as provided in [section 223 or 224] *sections 223, 224, and 225* and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with

intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

* * * * * * *

TITLE II—COMMON CARRIERS

* * * * * * *

SPECIAL PROVISIONS RELATING TO TELEPHONE COMPANIES

SEC. 221. (a) * * *

(b) Subject to the provisions of [section 301] *sections 225 and 301*, nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

* * * * * * *

SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) DEFINITIONS.—As used in this section—

(1) COMMON CARRIER OR CARRIER.—The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

(2) TDD.—The term "TTD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) TELECOMMUNICATIONS RELAY SERVICES.—The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an indi-

vidual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) USE OF GENERAL AUTHORITY AND REMEDIES.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, within the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

(d) REGULATIONS.—

(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c);

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

(3) JURISDICTIONAL SEPARATION OF COSTS.—

(A) IN GENERAL.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) ENFORCEMENT.—

(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such compliant is filed.

(f) CERTIFICATION.—

(1) STATE DOCUMENTATION.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunications relay services.

(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) COMPLAINT.—

(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such compliant to such State.

(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) final action under such State program has not been taken on such complaint by such State—

(i) within 180 days after the complaint is filed with such State; or

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).

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TITLE VII—MISCELLANEOUS PROVISIONS

* * * * * * *

TELECOMMUNICATIONS POLICY STUDY COMMISSION

[SEC. 711. (a) There is hereby established the Telecommunications Policy Study Commission (hereinafter in this section referred to as the "Commission") which shall—

[(1) compare various domestic telecommunications policies of the United States and other nations, including the impact of all such policies on the regulation of interstate and foreign commerce and

[(2) prepare and transmit a written report thereon to the Congress, the President, and the Federal Communications Commission.

[(b)(1) Such Commission shall be composed of the chairman and ranking minority members of the Committee on Commerce, Science, and Transportation and the Communications Subcommittee of the Senate and the Committee on Energy and Commerce and the Telecommunications, Consumer Protection and Finance Subcommittee of the House of Representatives (or delegates of such chairmen or members appointed by them from among members of such committees).

[(2) The chairmen of such committees (or their delegates) shall be co-chairmen of the Commission.

[(c)(1) The report under subsection (a)(2) shall be submitted not later than December 1, 1987. Such report shall contain the results of all Commission studies and investigations under this section.

[(2) The Commission shall cease to exist—

[(A) on December 1, 1987, if the report is not submitted in accordance with paragraph (1) on the date specified therein; or

[(B) on such date (but not later than May 1, 1988) as may be determined by the Commission, by order, if the report is submitted in accordance with paragraph (1) on the date specified in such paragraph.

[(d)(1) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the chairmen, shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, including traveltime, and while away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

[(2) The Commission may appoint and fix the pay of such staff as it deems necessary.

[(e)(1) In conducting its activities, the Commission may enter into contracts to the extent it deems necessary to carry out its responsibilities, including contracts with nongovernmental entities that are competent to perform research or investigations in areas within the Commission's responsibilities.

[(2) The Commission is authorized to hold public hearings, forums, and other meetings to enable full public participation.

[(f) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out this section and shall furnish to the Commission such information as the Commission deems necessary to carry out this section, in accordance with otherwise applicable law.

[(g) There are authorized to be appropriated such sums as may be appropriated to carry out this section for a period of three fiscal years.

[(h) Activities authorized by this section may be carried out only with funds and to the extent approved in appropriation Acts.

[(i) Nothing in this section shall be construed to affect any proceedings by, or activities of, the Federal Communications Commission, except that the Federal Communications Commission shall consider submissions by the Commission submitted pursuant to subsection (a)(2).]

SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.

* * * * * * *

DISSENTING VIEWS ON THE AMERICANS WITH DISABILITIES ACT

In voting to report H.R. 2273, the Americans with Disabilities Act (ADA), the full Energy and Commerce Committee has endorsed a sweeping and, in many ways, unprecedented attempt to extend civil rights protection to the disabled and to those who resemble the disabled. We wholeheartedly support the goals of the legislation, *i.e.,* to incorporate the disabled into the mainstream of American life and empower them to realize the fruits of our society. But, in attempting to translate these goals into legislative language, we believe the ADA goes well beyond the parameters of what we consider to be reasonable legislation.

Unlike other committees with partial jurisdiction over the bill, the Energy and Commerce Committee quite properly opted to address only those provisions within its jurisdiction. Thus, the Committee approved provsions dealing with rail transportation and telecommunications that are considerable improvements over the original version of H.R. 2273. In fact, the Committee recognized that the ADA would potentially bankrupt multibillion dollar economic entities within its jurisdiction, including Amtrak and commuter rail lines around the country. We do not doubt this assessment, and only wonder where the same reasoning and concern would lead if it were applied to the hundreds of thousands of small businesses that will eventually have to comply with the ADA.

In addition, the Committee amended some of the sections which also fall within the jurisdiction of the other committees considering this bill. For example, the Committee added Section 508(a), which is very similar to the language adopted in the Senate version of the ADA. Section 508(a) specifically excludes "homosexuality and bisexuality" from the list of impairments. It is clear that the Committee does not want the ADA to become a homosexual rights bill. We share that concern, and applaud the Committee for its inclusion of section 508(a). Unfortunately, as we will discuss later, the bill as approved by the Committee includes other sections which transform the ADA into a de facto homosexual rights bill.

Section 508(b) reflects the Committee's concern that the ADA not trivialize the notion of disability. We endorse this section as far as it goes. Section 508(b) specifically excludes

> (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior disorders;
>
> (2) compulsive gambling, kleptomania or pyromania; or
>
> (3) psychoactive substance use disorders resulting from current use of illegal drugs.

Subparagraph (1) lists six sexual behavioral disorders and ends with a generic reference to "other sexual behavior disorders." Similarly, subparagraph (3) refers generically to "psychoactive sub-

stance use disorders." Subparagraph (2), however, mentions only three behavioral disorders—compulsive gambling, kleptomania, and pyromania—and stops there. During full Committee markup, Mr. Dannemeyer offered an amendment which sought to make the scope of subparagraph (2) more consistent with the scope of subparagraphs (1) and (3), by adding a generic reference to "other behavioral disorders." His amendment would also have created a new subparagraph (4) with an exclusion for currently contagious diseases and sexually transmissible diseases or infections. The Committee rejected the amendment.

Even a cursory review of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III-R) illustrates the need for this amendment. Dozens, and perhaps hundreds, of behavioral disorders qualify for special protection under the bill approved by the Committee. For example, obsessive compulsive disorders receive full protection as "disabilities" under the Committee bill. According to DSM-III-R:

> Obsessions are persistent ideas, thoughts, impulses, or images that are experienced, at least initially, as intrusive and senseless—for example, a parent having repeated impulses to to kill a loved child. . . . The person attempts to ignore or suppress such thoughts or impulses or to neutralize them with some other thought or action.
>
> When the person attempts to resist a compulsion, there is a sense of mounting tension that can be immediately relieved by yielding to the compulsion. *In the course of the illness, after repeated failure at resisting the compulsions, the person may give in to them and on longer experience a desire to resist them.*

Under the ADA, would an employer be able to take prudent, prophylactic steps to control an employee whose psychological profile suggests that he wants to murder his fellow workers? A tragic incident that occurred last September in Louisville, Kentucky may provide an unnerving answer to that question. In that situation, an employee who had been admitted to hospitals for mental problems and had attempted suicide three times settled a discrimination suit against his employer and returned to work. The complaint was brought under Kentucky law and coerced the employer into returning the employee to his old position, an action which satisfied the Kentucky law's requirement that employers make "reasonable accommodations" for employees with disabilities. Soon thereafter, the employee used an assault rifle to kill seven of his coworkers.

It is our sincere hope that the ADA does not become a shield for mentally unstable individuals such as the Louisville mass murderer. We should not deprive employers of the right to screen employees for character traits that may endanger others.

Two other amendments were offered in the full committee to rein in the scope of the bill. Unfortunately, these amendments were also rejected.

The Perceptually Disabled and Anticipatory Discrimination

The ADA allows a person who is *not* disabled to initiate a lawsuit seeking redress for discrimination *that has not occurred.* It accomplishes this Orwellian feat in two ways. Section 3(2)(C) defines

the term "disability" to include an individual "being regarded as having" a physical or mental impairment that substantially limits one or more of the individual's major life activities. Sections 105 and 306, moreover, make the remedies in the Civil Rights Act available to anyone who "believes that he or she . . . *is about to be* subjected to discrimination on the basis of disability."

The unprecedented scope of this legislation makes it impossible for employers and other entities covered under the ADA to understand the obligations and potential liability they face. How can an employer attempt to eradicate discrimination that has not occurred? How can the owner of a store "reasonably accommodate" a person who is not disabled, but may be regarded as such by some future court? The terminology is too vague and uncertain for a statute that will reach into so many corners of our society.

There may be an alternative explanation for the inclusion of "perceptual discrimination" in the ADA. The Supreme Court's decision in *School Board of Nassau County v. Arline,* found that a person with the contagious disease of tuberculosis is a handicapped individual within the meaning of Section 504 of the Rehabilitation Act of 1973. Since the *Arline* decision, the Department of Justice has extended the reasoning in *Arline* to include persons with asymptomatic HIV infection.

Sixty percent of the 119,950 adults who have been diagnosed with full blown AIDS as of February 1990 contracted the fatal virus through homosexual activity. An additional 7 percent list homosexual activity as one of their risk factors. It does not require a particularly shrewd attorney to argue that the protections available in the ADA are available to *all* male homosexuals by virtue of the perception that homosexual males "are regarded as" being infected with HIV. Indeed, a New Jersey court has interpreted a similar state law in exactly this fashion.

Such a result was clearly not intended by my colleagues, in light of the unambiguous exclusion in Section 508(a) for "homosexuality and bisexuality." Extending special rights to individuals on the basis of their sexual conduct strikes us as ill-advised. Will a future court require insurers to provide health insurance to persons who are at risk of acquiring HIV at the same rates charged to others? Will employers be precluded from testing prospective employees for HIV on the theory that such a policy would have "the effect of" discriminating against homosexuals, and risk exposing others to tuberculosis, cytomegalovirus, and other AIDS-associated illnesses? Will the politics of sexual orientation one day require similar protection for persons claiming other sexual preferences?

To reiterate, we believe that the ADA seeks to address a legitimate problem by making it easier for the disabled to participate in and reap the fruits of our prosperous and productive society. Unfortunately, the Committee has adopted a bill which is unnecessarily broad and vague. In particular, we believe that the ADA is a homosexual rights bill in disguise. These shortcomings, in our opinion,

threaten to trivialize the entire notion of disability rights. Finally, this legislation may prove enormously expensive to small businesses across America. The Committee has recognized this in addressing the legitimate financial concerns of the rail industry. We suggest that similar concerns exist with respect to small businesses.

We respectfully dissent from the majority report.

BILL DANNEMEYER.
JOE BARTON.
DON RITTER.

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